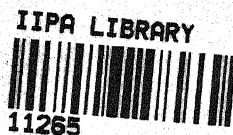


GOVERNANCE OF INDIA.

**A Commentary on the Government of India Act,
(Consolidated) of 1919, with additional chapters
on the Indian Local Government, Indian
Army, Indian Finance, and the Native
States in India.**



BY

K. T. SHAH B.A., B.SC., *Barrister-at-Law,*
Professor of Economics, University of Bombay.

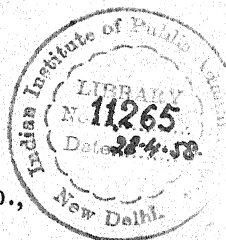
AND

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INTRODUCTION.

India's Place in Imperial Federation.

To attempt a full description of the political institutions of a country is a very difficult, and often a thankless task. The entirety of administrative organs, with all their complexity of structure and variety of functions, is seldom described in a single instrument. In many countries, like Hungary, or Russia, or England, no such document at all exists. Even in the countries—like the United States or France—where all constitutional provisions are supposed to be contained in one document—the silent growth of usage, the accumulated force of indefinite but well-known precedent, render the letter of the constitution incomplete if not obsolete, unreliable if not altogether fictitious. Change and progress is the one law of human life to which all human institutions must submit, and political institutions, far from being an exception to the rule, are amongst the most unstable of our achievements. The experience of France alone suffices to show that a constitutional instrument, if it aims at immutability, attempts an impossible task. For the functions and importance of administrative authorities vary, even while the constitution which instituted them remains itself unchanged. Only, in the absence of specific amendments of the constitution, the ingenuity of constitutional lawyers, sharpened by the exigencies of an unthought of situation, will suggest interpretation, which, because they were never intended by the authors, will not be the less approved and accepted. Such interpretations make the original, unaltered constitution a mere fiction, a standing, solemn, satire on those who intended it to be unalterable. Besides, in describing political institutions, an honest author has often to wrestle—consciously or unconsciously—against the influences of his own education and environment. He has eternally to be on his guard against losing sight of the perspective between the past and the present. Living in the present, thinking always of the present, he often unwillingly, unconsciously exposes himself to the charge of partisanship. To avoid

that charge altogether ought to be the aim, but it is often an impossible ideal. To outline all the aspects of a question would be the safest rule of conduct, but for the risk of undue prolixity. To present one's own opinion on a question, and to support it, when necessary, by examining and exposing the opposite opinion is possible to every writer, and not entirely reprehensible.

These difficulties, common to all writers on political subjects, are particularly hard to overcome for a writer on the Indian polity. The powers of the Government of India are derived from several sources, and of these the Acts of Parliament are the most important to-day. An Act of Parliament seldom deals exhaustively with a topic; but even when it does, English legislators delight in fashioning each Act so far as to suit only the exigency of the moment. They fancy themselves to be of an eminently practical bent of mind, because they exclude logic and system in the conception and finish of their creations. One cannot quarrel with a people, who serenely accept their obvious defects as the undisputed hall-mark of their genius. But since Acts of Parliament—even the best of them—leave ample-room for forensic construction and judicial interpretation, the student is bewildered by the number alone of the statutes—each explanatory, amendatory, or abrogatory of the previous ones—through which he has to pursue his investigations. In the case of the Government of India, for instance, the consolidating Act of 1915 had to repeal, or amend, 47 previous statutes, and the Consolidating Act was itself amended within less than a year after its passage, not to mention the more radical changes in 1919.

Acts of Parliament, even when they are logical, systematic, and comprehensive, do not tell the whole tale. At most they can provide the bare skeleton; the breath of life has to be infused from other sources. Under the Company, two distinct agencies tried to fill up the inevitable gap left by an Act of Parliament. Great pieces of legislation, like the Charter Acts, were preceded by exhaustive inquiries by Parliamentary Committees, and the Acts were based on the reports of those committees. These reports, therefore, served as an unfailing guide to the motives actuating the authors of that legislation. And when a new Act was passed, the comments of the

Court of Directors, embodied in their dispatches to the authorities in India, served to explain and illustrate the changes made in the *status quo*. They used to be regarded as an authority on the principles governing the relations between the supreme government and its provincial lieutenants in India. Valuable light may also be thrown on the scheme of the Governance of India under the Company by the pages of Hansard, though this last becomes particularly important only after India had passed to the Crown. More important than these is the voluminous literature comprising the biographies and private correspondence of some of the leading personages in the story of India under the British rule.

With the aid of these several agencies of Parliamentary reports and Directors' dispatches, and the lives and correspondence of men like Clive and Hastings, and Burke and Dundas, and Canning and Wellington, we may indeed succeed in animating the bare skeleton provided by parliamentary enactments. But, as already observed, these are not the only sources of the powers of the Government of India. The prerogative of the Crown—vague and extensive in England, is not insignificant in India. And a still greater portion of the governmental machinery depends upon the acts and ordinances of the local legislatures and authorities. The entire scheme of local self-governing institutions in India, or the great code regulating the conduct of public servants in India, is the result of such action. These local acts, ordinances, and resolutions are more numerous than the statutes of Parliament, and need external commentaries as much. The force of custom and precedent, ever very powerful, is particularly important in the bureaucratic atmosphere of India. To explain this mass of local acts, to render precise the indefinite sway of usage, the student must seek the help of the published volumes of dispatches and correspondence, as well as that of the speeches and writings of eminent men connected with the administration, like Sir R. Temple, Sir J. Strachey, Sir H. Maine. Reports of Royal Commissions, and resolutions of policy issued by the Imperial Government or the Legislature are also indispensable.

The mere mention of the necessity to consult such a variety of authorities would suffice to give an idea of the difficulties of a student

of Indian political institutions, even in that portion of them which has been the subject of definite legal enactments. A not insignificant portion of the powers of government in India is derived from the ancient rulers of the country. This is a heritage of the days when there was no constitution, and when the personal genius or caprice of the ruler was all. The whole of the Indian system of finance, if we exclude the most recent changes; the chief sources of public revenues; the constitutional position and practical importance of the Army—all alike bear witness to this heritage of our past. In this respect the greatest difficulty is the lack of any authoritative pronouncement guiding the policy. As an instance in point, we may mention the position of the Native States in India. The relations between the British Government and the Native States have formed the subject of numberless treaties and engagements and *sanadas*. But many of the treaties, even when they have not been specifically annulled or abrogated, are often obsolete owing to the ever increasing mass of custom and precedent, and not less to the changed atmosphere of the times. The older treaties contemplate the relations of equal allies; the more recent ones seem to suggest the position of sovereign and feudatories. We are at a loss to determine the exact principles governing this subject—in spite of an illuminating treatise by the late Sir W. Lee-Warner, because it has ever been the policy of the Government of India to regard these relations as confidential.

Yet another difficulty is raised by the admitted fact of political transition in India to-day. The European War proved serviceable to India inasmuch as the claims of India obtained recognition, thanks to her services to the British Empire in the hour of its utmost need. But the changes brought about by the Act of 1919, following upon the joint Report on Constitutional Reforms promised by a Parliamentary declaration of August 1917, are themselves proving insufficient. The Legislative Assembly has more than once tabled and discussed resolutions demanding immediately a further instalment of Reforms, notably in the direction of introducing responsibility in the central government and abolishing the Dyarchy in the Provincial government. But in the life-time of the first Legislative Assembly, elected under the reformed constitution,

Government remained inflexible in their attitude of not hurrying until the novitiate of ten years—as required by the Act of 1919,—was completed by the Indian people. They were helped in this attitude, possibly, by the doctrine of Non-Co-operation with the irresponsible Government; for under its influence the most advanced and popular section of the Indian public leaders omitted to contest seats in the Legislature. That doctrine has been, since the incarceration of its author and exponent, modified. A party of the advanced nationalists decided to fight the general elections of November 1923, and are now in appreciable strength in every province and even in the central Assembly. Under their influence, a fresh resolution has been passed in the Assembly, demanding immediate further advance even while these pages are going through the press. And though the arch-apostle of the Non-Co-Operation doctrine has been released before his time, it is an open secret that the present Indian Constitution can by no means be regarded as final and eternal. Nor does the Act of 1919 itself make any such pretence.

In the following pages, I have discussed only the domestic problems of India from the standpoint of an Indian statesman. But the aspect of India as a unit of the British Empire has, by recent events, acquired an importance which no student of Indian political institutions can ignore; and this is perhaps as fit a place as any in the body of the book to discuss that aspect. No one can write now, as Prof. Lowell wrote only a few years ago, that the question of Imperial Federation can have reference only to the Self-Governing Colonies and England. If we are to believe the highest authorities in England, and if we may accept some of the recent events as an earnest of intentions, we may take it as settled that no scheme of Imperial Federation will now be entertained which does not incorporate India as an integral part of the Federation. The question, then, to discuss is: how the idea of the Federation, if realised, will affect India, and what would or ought to be India's position in the Federation.

It may be observed at the outset that there is not, and there cannot be, that unanimity of sentiment in favour of a closer union which we in India are at first sight apt to imagine. A closer union of the

various Self-governing Dominions would impair the autonomy enjoyed. That there is at all a sentiment for a closer union, and that not in England alone, is explained by the fact that, under the existing state of things, on all occasions of the greatest moment, England could virtually compell her self-governing colonies to forego some of the powers of local autonomy. Said Mr. Hughes the Australian Premier, on the eve of his departure from England in 1916: "The consequences of the War to the Dominions are not confined to contributions of men to fight the battles of the Empire, nor to their maintenance; but extend in such a way as in effect to reduce the self-governing powers of the Dominions, merely giving effect to the war policy determined by those who control it. And the effect of doing so will not end when the war ends, but will remain for many years—in this case at least for a generation—to modify profoundly, if not actually to determine, the policy of the Dominions. It will hardly be denied that if Britain had a right to compel the Dominions to incur such a tremendous burden of debt, as this war will impose upon all of them, it has, for all practical purposes, the power to compell them to impose heavy taxation upon themselves: and, if one nation has a right to tax another, it is perfectly clear that the sovereignty or quasi-sovereignty of the latter disappears". (The Times, June 1916.) This long extract is given to show that the idea of a closer union of the Empire, stripped of its sentimentalism, is caused: on the side of England by the difficulty to meet single-handed the cost in men and money of a modern European War, as also the much greater cost of preparing for it; and on the side of the Dominions in a desire to control the foreign policy of the Empire with a view to reap the economic and other advantages expected to result from a control of the external affairs. Where colonial politicians have not yet risen to the stature of Imperial statesmanship; where the perception of advantages resulting from a co-ordination of foreign policy and defence is yet vague, the sentiment for union, involving a surrender in some measure of the powers of self-government, does not find favour with the public. Thus at a Nationalist Congress in South Africa, held at Worcester in September 1916, a resolution was moved and carried: "This Congress, having heard of the movement in the United Kingdom and its colonies in favour of a reconstruction of the British Empire,

declares itself as strongly as possible against such reconstruction, which may have the effect of any reduction of the existing rights of colonial self-government, or any interference with the immediate power of the people of the Union, or our Government, over matters of moment to the country." This resolution expresses the sentiments of a significant portion of the people of that colony. Perhaps we may explain this opposition to federation in South Africa on the ground of the unfortunate race question between the Boer and the Briton. Such race differences exist even in other colonies. That French and English Canadians are at one for the time may be explained by the close alliance between England and France. But should a conflict occur between those countries, or worse still, between England and the United States, may not the same opposition be apprehended in Canada? Even in the purely British Colony of Australia the sentiment in favour of a Federation is by no means so unanimous as the utterances of Mr. Hughes and other Imperialist politicians might suggest. An Australian correspondent of the *New Statesman* wrote from Melbourne on February 16, 1917: "The opinion prevails in the country that Australia's real attitude towards Imperial Federation has been seriously misrepresented by publications like the *Round Table* and the *Quarterly Review*, and a certain group of officials and politicians who pose as authorities on Commonwealth affairs.....The truth is that outside a very limited circle there is nobody of opinion which favours Imperial Federation, or any closer political bonds with the United Kingdom." In support of this view the same writer quoted the "Sydney Telegraph" writing as follows:—"Nothing exists to show that the system which has yielded such excellent results until the war and during the war, cannot continue to do so. It is quite unwarranted to assume that in its foreign policy the Imperial Government, as matters stand, does or can ignore the interests of the Dominions, or that under a system of Imperial Federation, our influence upon the shaping of such policy would be greater than it is now. Any representation that you have in an Imperial Government would be sufficient to enable the Commonwealth view appreciably to affect its decisions." (The *New Statesman*, April 21, 1917). In India also, the ultra nationalist circle does not, by any means, smile upon the idea of for ever main-

taining connection with Britain, which is perceived to have its bright as well as the dark side. In more than one session of the Indian National Congress have motions been tabled for complete independence; but for the present, however, the more moderate views seem to have triumphed. In Britain the last attempt made to rivet the bonds of the Empire indirectly, at least by trade preferences, has failed, and the idea is dead for the moment.

Under such a state of public opinion in the colonies, it would be presumptuous for an individual citizen of any part of the Empire to pronounce upon the desirability of the Federation. Nor can it be said yet what powers and functions will be allotted to the Imperial Council proper, if and when one is constituted, and what would be its relations with its constituents; though this much seems self-evident that at least the foreign affairs, defence, and some portion of financial powers will have to be made over to such a council. The case for a closer union with the United Kingdom and her colonies is a fair one in India, though some of the advantages supposed to result from such a union are likely to be exaggerated. Thus, we are often told, that India gains immensely in administrative efficiency by that class of her public servants who are trained in England. By severing her connection with the Empire, India might no doubt lose her English servants; but England is no longer the only country for training up young men in the rudiments of public service: nor are Indians altogether lacking in a turn for public service in every branch. On the other hand the necessity of public defence is yet too great for India to deny the value of England's co-operation in the defence of the country. The question whether India can ever be equal to her own defence is altogether a different one. But under the existing circumstances, and in view of the modern methods of warfare, it would be absurd to suggest that India could depend upon herself-unaided by England-at least for a generation. That her possible enemies on the frontier are weaker and cruder than herself is not a reason which proves India's ability to meet all possible exigencies. In economic matters, too, membership of the Empire is fraught with decisive advantages for us. India is only just waking up to her vast industrial possibili-

ties. These she cannot develop without capital. And capital she would find on easier terms by participating in the joint credit of the Empire than on her own credit. Moreover, with the foreign affairs in the control of a truly Imperial Council, in which India has her representatives, she might quite possibly succeed in securing for herself those economic advantages with which most treaties of the last generation were so fully occupied. The case for a closer union is, therefore, strong on military and economic grounds.

On the other hand, we must not ignore the possible case on the other side. The unfortunate experience of the consequences of a difference in race may incline many Indian publicists to declare against a closer union. But the question of a closer union can only be discussed on the assumption that India is completely autonomous for all her local affairs; and, with a popular and responsible government in India-which is given an equal recognition in the Council of the Empire,-the fears of racial differences are apt to be exaggerated, if not entirely unfounded. The experience like the one Indians were meeting with in South Africa, and more recently in Kenya, may not be quite impossible even under a federated Empire; but it may be safely said that such experiences will be rare; and always likely to be effectively remedied by India herself or by the Imperial Council. India was recognised and treated as an equal with the Dominions at the Peace Conference of 1919. 'She is an equal, original member of the League of Nations. The Imperial Conference of 1921 passed a resolution for equality of treatment to Indians in the Dominions, South Africa alone dissenting. The hopes, then, of an equal and autonomous Government of India, taking its proper place in the Council of the Empire,-if and when one is formed, is by no means quite an illusion.

Another obstacle in the way of a closer union may be found in the current of the informed public opinion of to-day. Leaders of public opinion seem to have definitely accepted the idea of provincial autonomy; but the logical conclusion of such an idea may quite possibly be a desire like the one expressed by the "Sydney Telegraph" quoted above. An attempt has been made in the body of this book to show why a really self-governing India would not

need provincial autonomy so urgently as leaders of public opinion seem to think to-day. In any case it is not unreasonable to believe that a fuller realisation of India's political and economic needs would prevent the turn of Indian nationalism in a channel which might lead to a desire for separation from the British Empire in the near future. As already observed, the materialisation of all these advantages is conditional upon India's being admitted in the Council of the Empire on terms of perfect equality. Even so, one might urge that no scheme of representation can give any single part of the Empire an appreciable influence in the joint Council of the Empire. Such a line of argument is based on a misconception of the nature and functions of the Imperial Council. While admitting that the constitution of the common council is bound to tax heavily the resources of Imperial statesmanship; while confessing that the problem of securing proper representation to each unit according to the different principles of population and political and economic importance is a grave one, we may yet say that the Imperial Council will only deal with purely imperial questions. The Government of India, like those of other units, will be supreme in the local concerns of India; and Indian representatives, we may assume, will be allowed a preponderant voice in the Imperial Council in those foreign questions which relate exclusively or preponderantly to India. As regards inter-state differences, the unbiassed opinion of a majority of the elect of the whole Empire may well be allowed to prevail, though such a device as a two-thirds majority in all fundamental questions of imperial policy may be profitably adopted. And as for the burdens of the Empire, necessarily resulting as a corollary of the union, they will have to be accepted if the advantages of the union are at all commensurate.

The last Imperial Conference held in London in October 1923 discussed carefully the question of the control over the Foreign relations of the Empire, and came to the following conclusions :—

“The Conference recommends, for the acceptance of the Governments of the Empire represented, that the following procedure should be observed in the negotiation, signature and ratification of international agreements.

The word 'treaty' is used in the sense of an agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between heads of states, signed by plenipotentiaries provided with full powers issued by the heads of the states, and authorising the holders to conclude a treaty.

1. Negotiation.

- “(a) It is desirable that no treaty should be negotiated by any of the Governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.
- “(b) Before negotiations are opened, with the intention of concluding a treaty, steps should be taken to ensure that any of the other Governments of the Empire likely to be interested, are informed, so that, if any such Government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.
- “(c) In all cases where more than one of the Governments of the Empire participate in the negotiations, there should be the fullest possible exchange of views between those Governments before and during the negotiations. In the case of treaties negotiated at International Conferences where there is a British Empire Delegation on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilised to attain this object.
- “(d) Steps should be taken to ensure that those Governments of the Empire whose representatives are not participating in the negotiations, should during their progress, be kept informed in regard to any points arising in which they may be interested.

2. Signature.

"(a) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the Government of that part. The full power issued to such representatives should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear.

"(b) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the Governments concerned.

"(c) As regards treaties negotiated at International Conferences, the existing practice of signature by plenipotentiaries on behalf of all the Governments of the Empire represented at the Conference should be continued, and the full powers should be in the form employed at Paris and Washington.

3. Ratification.

"The existing practice in connection with the ratification of treaties should be maintained.

II.

"Apart from treaties made between heads of States, it is not unusual for agreements to be made between Governments. Such agreements, which are usually of a technical or administrative character, are made in the names of signatory Governments and signed by representatives of those Governments, who do not act under full powers issued by the heads of the states; they are not ratified by the heads of the states, though in some cases some form of acceptance or confirmation by the Governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations, the Governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and, if so, steps

should be taken to ensure that the Government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views".

The resolution was submitted to the full Conference, and unanimously approved. It was thought, however, that it would be of assistance to add a short explanatory statement in connection with part I (3), setting out the existing procedure in relation to the ratification of treaties. This procedure is as follows:—

- (a) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the Government of that part;
- (b) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the Governments of those parts of the Empire concerned. It is for each Government to decide whether Parliamentary approval or legislation is required before desire for or concurrence in ratification is intimated by that Government.

Subsequently Canada has obtained the right of direct representation at Washington.

In the face of this, I have ventured to present, in the following pages, a picture of the administrative machinery of India as it works today. The picture, it need hardly be added, is bound to be sketchy, and perhaps incomplete. My only excuse for making an effort at all is the growing interest in an ever widening circle in political questions. It would be a pity if the awakening consciousness of the people of India to their political existence were left to be guided entirely by those amateur politicians, who are frequently without any equipment to handle political questions save their commonsense. I have endeavoured to make this little work interesting—and even useful—to a wider circle than the one embracing the under-graduates of our University, though, it must be confessed, the first impulse to write originated from my connection with the students. And in saying this I have no intention to underrate the merits of those eminent

authors, who had already endeavoured to enlighten the Indian and English public on the subject. Sir Courtney Ilbert's work is deservedly recognised as an authority. Sir George Chesney's classic "Indian Polity" 'has even now its own value. Sir John Strachey has given us an admirable picture of India as a high official of a generation ago looked at it, and his successors and imitators like Sir B. Fuller have not corrected their angle of vision. The Imperial Gazetteer gives a colourless but clear and authoritative version of the administration of India in 1906: while foreign observers—like M. Gazetteer Joseph Chailley—reflect the prejudices and preconceptions of their informants.

Working on the basis of a Parliamentary enactment, I had two alternative methods of treatment open to me. I might have followed Ilbert, and made this book a hand-book for the constitutional lawyers I have preferred to take the law as a background, to trace upon it the outlines of the political institutions of our country. Designed originally for the undergraduate, the book in its present form will, I venture to think, be of use to a wider world of students of India. It has been my constant endeavour to discuss each question scientifically; it was inevitable, therefore, to take into consideration the important aspect of each controversial point. And though on many questions I have not hesitated to pronounce an opinion, I have on many other points refrained from pronouncing for obvious reasons of uncertainty in the question itself, or incompetency of the author. I may only add that the purpose of this book should not be misunderstood, because, here and there, its outward form or some stray expression might lend itself to misconstruction.

The second edition of this work has been delayed owing to my being occupied incessantly with other and more urgent work. It might, perhaps, never have made its appearance, but for the kind offer of help made by Miss Bahadurji. The help she rendered in preparing and re-writing portions of the work has been so great that she is as much the author of it as he who first wrote it. Expressions of opinion are in every instance those of the original writer, who is, and must be, responsible exclusively for them. He alone is censurable for

any faults the work displays to the careful eye of a critical reader ; while the improvements in the work, such as they are, must be credited to the colleague, who has done her best to make the work fuller and rounder than before. I could have thanked her in conventional terms, did I feel my obligations less strongly. As it is, I simply have to acknowledge her the joint author, but the exclusive improver, of this work.

February 1924.

K. T. SHAH.

DEPARTMENT OF ECONOMICS,

UNIVERSITY OF BOMBAY.

Other Works by Prof. K. T. Shah.

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Trade, Tariffs and Transport in India.

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The Indian Iron and Steel Industry, (*a Pamphlet*).

Memorandum on Public Expenditure in India to the Indian
Retrenchment Committee, (*a Pamphlet*)-

CHAPTER I.

The British Parliament and the Government of India.

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Government of India Act,

[5 & 6 Geo. 5, ch. 61; 6 & 7 Geo. 5, ch. 37;
and 9 & 10, Geo. 5, ch. 101.]

An Act to consolidate enactments relating to the Government of India.

CONSOLIDATED ACT.

Government of India Acts (1915-19.) Consolidated.

Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of Self-Governing institutions with a view to the progressive realisation of Responsible Government in British India as an integral part of the Empire: and

Whereas progress in giving effect to this policy can only be achieved by successive stages and it is expedient that substantial steps in this direction should now be taken: and

Whereas the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples: and

Whereas the action of Parliament in such matters must be guided by co-operation received from those on whom new opportunities of service will be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility: and

Whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities:

Be it therefore enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament Assembled, and by the authority of the same, as follows:—

1. The Crown.

The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King-Emperor of India, and all rights which if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the Government of India.

The foregoing preamble to the constitution of India does not make any radical change in the basis of the Governance of this country. It presupposes, as ever before in the British era, that:—

(1) India shall remain an integral part of the British Empire, and accordingly have the character and scope of her political development in harmony with the fundamental principles of that Empire. The British Empire is, indeed, an Empire in name only, since the principal constituents are autonomous units, who owe but a faint allegiance to the nominal sovereign of the Empire. The only uniting links between these mutually independent states that make up the British Empire are:—(a) the British Crown, and (b) the centralised direction of the foreign policy of the Empire. But the first has no living importance upon the actual problems or details of the administration or Government of the Empire. The respect or veneration for the crown in the outlying parts of the Empire is due to the absence of the personal wearer of the crown for the time being. And as for (b), murmurs of discontent against the undue centralisation in the conduct of the Foreign Affairs of the Empire are not even now unheard. The Anglo-Japanese alliance for offence and defence was negatived in 1921, because the self-governing dominions were against it; and Canada at least has secured the right that in treaties with foreign states materially affecting the economic development of a Dominion, the representatives of that Dominion will be consulted and associated with the negotiation and conclusion of such treaties.* The union of the

*Cp. "The Imperial constitution and the Imperial Conference," by Prof. Berriedale Keith in the *Edinburgh Review* for July 1923.

constituent states of the British Empire is thus exceedingly slight. Nevertheless the absence of complete autonomy in the Government of India, makes it impossible to say that the Indian people are free to work out by themselves their own political destiny..

(2) The British Parliament remains, as it has been since the Regulating Act, trustee and guardian for the people of India. While the people of India were a helpless prey in the hands of a foreign bureaucracy exclusively enjoying the powers of Government, the doctrine of trusteeship of the British Parliament may have had some justification in the sentiment of international morality, though it may be doubted if even then the duties and obligations incidental to the trust could have been effectively discharged in the circumstances of the case. But with the emergence of the Indian people from the stage of absolute ignorance and helplessness, the doctrine of trusteeship by a foreign body becomes increasingly difficult to maintain; while its inherent inconsistency could not have been more clearly demonstrated than by the provision in the preamble that:

(3) The stages of progress on the road to complete autonomy will be determined at the exclusive direction of the trustee, —the British Parliament. No limit is fixed, no distinct condition laid down, for the termination of the trust. Should the interests of the beneficiaries under the trust conflict with those of the trustee, there is no means to make the trustee abdicate its authority which has become no longer acceptable.

(4) The only contribution, then, of the Reforming Act of 1919, towards the promotion of responsible Government in India, is the measure of partial Responsibility introduced in the form of dyarchy in Provincial Governments. The ideal of full responsible Government for India is to be achieved—not all at once, but by stages determined at the discretion of the British Parliament, and conditioned by the

satisfactory co-operation received from the Indian people in working the new constitution. As the first stage on the road to full responsible Government, the provinces are made independent of the Government of India, and partially responsible to the people of the provinces, both as far as consistent with the final responsibility of the Government of India to the British Parliament.

II. The Growth of Parliamentary Sovereignty over India.

The East India Company was in its origin a creature of the Royal Prerogative, and as such dependent upon the good-will of the Executive for all its powers. "By virtue of our Prerogative Royal, which we will not in that behalf have argued or brought into question," says the Charter of Queen Elizabeth, the East India Company is constituted and its powers determined. Under the immediate successors of Elizabeth those who depended for their existence on the Royal Prerogative had some very great hardships to face; for the first half of the XVII century was marked in England by the great struggle between the Crown and Parliament for ultimate supremacy which did not end with the execution of the King. Though the legality of the monopolies granted by Royal Prerogative was questioned under Elizabeth herself, and still more seriously under her immediate successor, the East India Company continued to be a creature of the Crown, or rather of the executive authority. Even when the Civil War had ended in the death of Charles I, and the establishment of the Protectorate, the position of the Company remained unaffected in this respect. The Protector, appreciating the value of the Eastern trade, and recognising the utility of the Company, lent them his strong support in their quarrels with their European rivals in the East. Thus in 1654, by the

Treaty of Westminster, he forced the Dutch to pay the Company a compensation of £ 85,000 for the massacre of Amboyna, and for their exclusion from the trade of the Spice Islands. Like his Royal predecessors, and his later Parliamentary successor, Cromwell did not give his aid for nothing : this very sum of £ 85,000 not being easy to be apportioned among the several joint stocks of which the capital of the Company consisted, Cromwell "borrowed" £ 50,000, pending the settlement. He extended the prestige of the Company by another Charter from himself incorporating a rival association with the East India Company. During the Restoration the position of the Company was quite satisfactory. Charter followed Charter in quick succession, each more lavish than the preceding in increasing the powers of the Company.

After the Revolution of 1688, however, the situation of the Company became very critical. On the throne was a king who had not forgotten his Dutch origin because he was made a king of England by a successful Revolution ; and who could not help looking with a favourable eye on the Dutch rivals of the English Company. Moreover, the then head of the Company, Sir Josiah Child, had identified himself and his Company far too much with the Stuart cause to be a *persona grata* with the ministers of William III. In the closing years of the XVII century the privileges of the Company were menaced by the growth of a New Company, which was encouraged by the ministers of the Crown, and which was given valuable rights by Acts of Parliament and Royal Charters. Though the Old Company managed to render nugatory, or at least innocuous the privileges of their rivals by buying up a great portion of the stock of the latter, the situation became more critical than before, as the promoters of the New Company found their rights almost valueless to themselves. A coalition between the two Companies was the only means to remedy the situation ; and it was effected by the intervention of Lord Godolphin in 1702. Further difficulties appeared in carrying out the arrangements of 1702. At last, therefore, an Act was passed in 1707, by which

the New Company was required to advance to the Crown an additional loan of £ 1,200,000 without interest. In consideration of this the Company's exclusive privileges were continued till 1726; and Godolphin was empowered to settle the outstanding differences between the two Companies. Accordingly Lord Godolphin gave an Award in 1708, and in the following year the Old Company surrendered all its charters and its separate existence came to an end. The original Charter of the New or the English Company became the source of all the powers of the Company,—the United Company,—and it remained unaltered upto the end of the Company in 1858, except by Acts of Parliament.

Though the sovereignty of Parliament was thus asserted as early as the beginning of the XVIII century, the first real attempt to regulate the government of the Company *in India* by Acts of the Parliament did not come till more than two generations after. The acquisition by the Company of the Civil Administration of Bengal in 1756, and their constant engagement in wars in India had so completely changed their original character of traders, as determined by charters and Acts of Parliament, that the need for a wholesale revision of the powers and duties of the Company could no longer be ignored. Even so the reform might have been yet further delayed had it not been for the financial necessities of the Company. When they applied to the Treasury to advance them a loan, the Government of Lord North took the opportunity to revise the constitution of the Company by an Act of Parliament. The Regulating Act was the result; and for the first time the Government of the East India Company, both in England and in India, came to be regulated in all its entirety by an Act of Parliament. The principle seems to be from this time unquestionably established **that all changes in the structure of the Government in India as well as in England can only be made by an Act of Parliament.** The entire control of the Government in this country cannot, it would seem, be said to be under the sovereignty of Parliament from 1773. But even this doubt was removed by the Act of 1784, by which a Board of Control was established to

superintend and control the affairs of India, and the President of which became responsible to Parliament. Even after the Act of 1784, though there was a regular machinery for the exercise of Parliamentary control, the authority of the Board, and therefore of the Parliament, was not the only authority concerned with the administration of India. The Court of Directors of the Company were still left considerable power, and very frequently it became exceedingly difficult to locate the responsibility for a particular Act of the Government of India, as for instance in the first Afghan War. This situation was at last remedied by the transfer of the Government of India to the Crown in 1858, when a **Secretary of State was made solely responsible to Parliament for the Government of India, and was given power to superintend, control and direct the Government of India.**

III. Nature and Extent of Parliamentary Sovereignty over India.

In the theory of the law, Government by the Crown means Government by the British Parliament. In common with all the parts of the British Empire, the legal Sovereign of India is the King-in-Parliament. The English system of constitutional monarchy, which is supposed not only to solve the problem of the monarchy in a democratic environment, but is also believed to hold together the so-called British Commonwealth of Nations, works in practice in a way calculated most artistically to bewilder an unwary student. It is only recently,—since 1917, to be precise—that the problem of reconciling the local autonomy of the constituent members of the British common-wealth of nations with the unity of the whole Imperial organisation has come to the fore. We shall have occasion to examine this question more in detail later on. Confining ourselves here to the historically earlier question of autocracy in

name *versus* democracy in fact, it must be noticed that, though in theory the King is still the supreme ruler "by grace of God, of the United kingdom, its dominions beyond the seas and the Empire of India*", in practice the position of the British king "by Act of Parliament" is pretty generally and specifically limited. There is, indeed, still a considerable margin of debatable land between the known, specific, statutory powers of the King as the first Magistrate and the titular head of the commonwealth, and the vague, indefinite, unknown and conventional powers assigned to or enjoyed by him. It would make an inexcusable digression were we to enter here on a full description of the known and unknown spheres of the British constitution. It is enough for our purposes to note that a good deal must necessarily depend, in so far as there is a debatable land of indefinite convention, upon the personality of the sovereign of the day. There is*, however, this difference between the sovereignty of the King-in-Parliament in the Self-Governing colonies and in India:—that while in the Self-Governing colonies the delegation by the Imperial Parliament of legislative independence has gone so far that Parliament seldom interferes in the domestic affairs of, or legislates directly for, those colonies; in India, on the other hand, though there is no doubt a certain amount of delegation of legislative authority, the right of the British Parliament to legislate directly for British India is more than nominal. It is true India has a constitution granted by Parliament—a constitution which is codified by the present Consolidating Act; but in spite of some delegation of legislative autonomy, Parliament still retains a

*The full title of the King Emperor is:—His Most Excellent Majesty George The Fifth, by the Grace of God King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Defender of the Faith, Emperor of India. In these terms the phrase by Grace of God ought more accurately to be "by Act of Parliament," which also conferred the title of the Emperor of India in 1876. The term "Defender of the Faith" was bestowed on Henry VIII. by the Pope while that monarch was still a Catholic. It is retained in the official title of the King, though it has long ceased to have its original meaning, just as the similar title of "Daulat-i-Inglesia" (Wealth of the English) is retained in the official style of one of the Indian rulers.

considerable field for legislation relating to India in which its authority is supreme and is frequently directly felt.

As regards the entity known as King-in-Parliament, he works with the aid of a ministry or Government, the head and principal members of which are elected by a sort of indirect election by the representatives of the people. Ministries in Britain must be chosen from that party in the House of Commons which has a majority for the time being. The King, indeed, so selects only the Prime Minister. But the latter, in his turn, selects his principal colleagues, whose names are submitted for formal approval to the Sovereign. Under a well-known convention of the constitution these ministers collectively,—as well as individually—must possess the confidence of Parliament, which in practice has now come to mean only the House of Commons. The confidence is usually manifested by assenting to the legislative measures of public importance submitted by the ministry for sanction and passing by parliament; by the approval, when questioned, of the administrative acts and executive policies in Home or Foreign affairs, of the ministry; and by the supply of funds for carrying out the administrative work of the nation. This last is supposed to be the key-stone of the arch of constitutional Government,—the so-called Power of the Purse. Its compliment in administration is to be found in the ultimate power of Parliament to pass or refuse the Army Act—which is the ultimate means of keeping intact the administrative machine; and which, by a convention of the constitution, is submitted annually to Parliament. A ministry unacceptable to Parliament can thus be brought to heel by one of two means, by the refusal of supplies, or the more drastic step of refusing to pass the the Army Act. It may be that the Parliament itself may be out of touch with the people it represents. As the moral authority of Parliament ultimately rests upon the popular will it is supposed to represent, the Parliament may be dissolved if it be considered to be lacking in public sympathy. Its own creature—the Ministry—can annihilate it. But if its successor, the

new Parliament, does not approve of the Ministry, the latter must yield or resign. This is in effect the actual working of the King-in-Parliament. Its connection with the outlying parts of the Empire is slight, but still noteworthy.

As regards the influence of the British Parliament on Indian affairs, we may note:—(1) Parliament alone is competent to make any changes in, or pass any new law in place of, the existing constitution of India, including the Imperial and the provincial governments. (2) The same authority alone can pass, amend, or alter any law affecting India and any other Dominion of the Empire, as also (3) India and any foreign powers with which the Government of India is not empowered to deal directly. On the other hand (4) international agreements, brought about under the aegis of the League of Nations for example, which, to be effective, have to be embodied in special legislation by each contracting country, *e. g.* the control of the Opium Traffic, or immoral traffic in women, arbitration of disputes in international trade of private citizens, or public corporations, may all be legislated for by the central legislature of the Empire; but, owing to the direct representation of the principal Dominions and India on the League of Nations, these subjects are now dealt with separately by each Dominion Legislature on the pattern of the central legislation. Finally, under S. 65, which defines the powers of the Indian Legislature, certain subjects are definitely excluded from the cognisance of either the Central or any of the Provincial legislatures in India.

Incidentally, it may also be added here, that the institution of the League of Nations does not in any way affect the complete internal sovereignty of each nation becoming member of the League. Though formed to end all warfare between the peoples of the world, it has not yet been vested with the supreme powers of policing the world and adjudicating upon its public and private disputes with a view to avoid the use of force. It still exists on the sufferance of its constituents. It lacks some very important constituents—like Germany or the

United States,—without whom its pretension to be a world council cannot be admitted, and its authority must necessarily be impaired in proportion. And it has yet no powers of direct action, either by legislation or by executive decrees; so that any effect that might be given to the decisions or desires of the League can only be through the individual action of its several constituents. To the enthusiastic idealist, the League may appear as the embryo of the future, full-grown, "Parliament of Man;" but judged from its actual history of four years' existence, the League is still only—a pious aspiration.

It must be noted, however, that though the sovereignty of the British Parliament over India is as complete as that over any part of the King's Dominions, the Government of India derive a substantial portion of their power from the Royal Prerogative as well as from the old Mogul Emperors of the country. (1) That the Royal Prerogative is by no means as obsolete in this country as in England or in the Self-Governing colonies—prerogatives such as legislating by Orders in Council or by Executive orders,—is evidenced by the practical repeal of the Partition of Bengal by a personal proclamation of the King-Emperor in Delhi in December 1911. Again the Royal Prerogative of Veto, which in Britain has not been used since the days of Queen Anne, is a living fact in our constitution, specifically guaranteed by a section of the Act of Parliament. [cp. particularly ss. 67 (2) a; power of certification 67 (4); Returning bills for reconsideration 67 (A) and B; and the final proviso to s. 67 B and 68 (1)] The King-Emperor, also, can, by Order in Council make important changes in the general administrative system of the country, e. g. the appointment of a High Commissioner for India, [cp. s. 29 A. of the Government of India (consolidated) Act]. (2) And that the Government of India exercise certain powers which can only be explained by their being regarded as successors of the old Mogul Emperors can be proved by many a revenue code. But when these allowances have been made, it still remains true that the general constitution of the Govern-

ment to-day, both in India and in England, has been created and regulated by Acts of Parliament. Thus the functions of the Governor-General, the powers of the local Legislatures; the constitution and jurisdiction of the several High Courts; the very existence of the Secretary of State and his Council—all alike are based upon Parliamentary enactments.

In matters outside the legislative sphere, Parliamentary supremacy is very often directly felt by the Government of India. Thus in executive matters the Foreign relations of the Government of India are almost exclusively determined by the Home Government.* And in so far as Parliament can be said to control the Foreign Policy of the Empire, the Foreign relations of India also are to that extent controlled by Parliament. Again, in matters financial, Parliament has laid down that the revenues of India may not be applied for military expeditions outside the frontiers of India without the consent of Parliament, except for preventing or repelling an actual invasion or any other sudden or urgent necessity;† that detailed accounts of Indian revenues and expenditure must be laid annually before Parliament together with a Report on the Moral and Material progress of the country.‡ In addition to all these, in accordance with constitutional usage, the Secretary of State, as Minister of the Crown, is exposed to criticism in Parliament and to a vote of censure should an occasion arise.

*The relations of the Government of India with the Indian Princes, technically also known as Foreign Relations, are conducted directly by the Government of India. But the explanation for this procedure probably is that, in the eye of International Law, the British Government has prevented the Indian States from being regarded as independent sovereign entities. Their subjects, for example, when travelling outside India, are treated as British subjects. The same is the case with some border states, e.g. Afghanistan until quite recently, Nepal, Bhutan and Tibet.

†See S. 22.

‡See S. 26 as also 84A. providing for a decennial revision of the constitution.

IV. The Actual Position.

This is the position in theory. In point of fact, however, the influence of Parliament in the conduct of Indian affairs is relatively insignificant. There are various reasons why Parliament cannot interfere frequently and directly in the actual task of administration. Chief among these are the following:—

1. The British Parliament has neither the time nor the energy to superintend, much less to carry on directly, the Government of a distant dependency like India. Even at Home, the practice has recently grown up of delegating a great deal of its legislative authority to the leading departments of State or to the King-in-Council. The so-called Statutory Orders are all framed under such delegated authority; and when they are approved of or notified to Parliament, they have as great a force as any law of the realm. The intricacy and complexity of modern legislation makes it inevitable for a body of amateur legislators to rely more and more upon expert advice, both in the framing and working of those laws, reserving to itself only the power of criticism and approval. This dependence upon a subordinate authority becomes greater as the distance or dissimilarity of local conditions increases. In matters relating to India, therefore, though in the theory of the law Parliament is sovereign and is quite competent to legislate on any conceivable topic relating to this country, in point of fact, Parliament does not and cannot legislate for any and every topic. It confines itself usually to acts relating to the Political Constitution of the country, or those enabling the Secretary of State to raise moneys by loan in England.

2. The deliberate, settled policy of the statesmen of England, ever since the transference of the Government of India to the Crown, has been to keep all Indian questions outside the pale of party politics. In actual fact, here as elsewhere in the British constitution, the practice differs materially from the theory. The Secretary of State, for example, has always been a leading light of his party,—a party-man who comes to and goes

from his office along with the rest of his party. And party bias, in so far as it can be described to affect the general outlook on Imperial questions by the British government of the day, does occasionally colour the decision of grave questions of policy relating to the whole Empire. *e.g.* the rights of Imperial citizenship in the different parts of the Empire for all races of the Empire. The theory, as it stands, is often regarded as a very wise maxim; and people are not wanting who believe that India gains by it. All the same by being excluded from party programmes, Indian questions seldom receive that searching, exhaustive, almost venomous criticism from the press and platform, from the opposition in and out of Parliament, which every question included in its programme by one of the leading parties in the State habitually receives in England. And even if we believe that the exclusion from party politics is a good thing for India, it cannot but be admitted that grave questions of imperial policy, in which India is vitally concerned, will never be thoroughly discussed if India is kept out of politics so determinedly in England. Party dominates the whole field of Politics in England. Whatever their abuses, constitutional Government would be impossible in England without parties. And however sound the theory of exclusion of India from party politics may seem, so long as the supremacy of the British Parliament over India is maintained, it is futile to expect any definite solution of our constitutional questions if our country is altogether kept out of politics in future as she has been in the past. We may conceivably lose by our political problems being brought on the party programme and being made party issues in England. But it is quite certain that Indian questions would receive much greater attention, and therefore much speedier solution, if they are brought on the party programme.

3. The expedients provided for maintaining the supremacy of Parliament have, in practice, either fallen into disuse, or ended in being mere formalities. Thus for instance, Parliament has laid down definite rules as regards the employment

of the revenues of India. But such restrictions, from their very nature, are of a negative kind which can be, and have been, relaxed whenever necessary. Moreover it used to be common custom to present the finance accounts of the Government of India to Parliament towards the fag end of Parliamentary session. The members at that time are more anxious to finish up the work, and enjoy their well-earned holidays, than to raise discussions or debates on such an uninteresting and intricate topic as the finances of India. Those who have attended in the visitors' gallery of the House of Commons on days when the accounts of the Government of India were laid on the table of the House, and when they ostensibly formed the subject of discussion for the day, could not but have been surprised at the scantiness of attention paid by Members of Parliament to the well-being of the peoples of an Empire, which is described as the brightest jewel in the British Crown. Usually there are not more than half a dozen members all told in the whole House, including the Speaker and the Secretary or Under-Secretary of State who presents the accounts. The debate, if we may so dignify the proceedings, ended in a motion which amounted to saying that the accounts of the Government of India showed what they showed. Occasionally a member puts some questions which the occupant of the almost empty treasury bench may answer or brush aside. Since the Act of 1919 this position has been considerably modified. The salary of the Secretary of State for India and all the political charges of his department are paid out of the British revenues, and the British Parliament is thus given a direct interest in the matter. The opportunity is regularly provided, while the British Budget is passing through the Parliament, to bring in motions and raise debates on Indian questions; and, it must be recognised, in recent years the Indian debate in the House of Commons has been decidedly superior in tone, quality and information. But even so, it may be questioned if the real problem of the Governance of India can be solved in England.

4. Added to all these is the general ignorance, and in some

cases total incompetence, of the members of Parliament about questions relating to distant parts of the Empire which helps to perpetuate Parliamentary indifference to Indian questions. The average Member of Parliament has his hands full with questions that relate to his own constituency or to the peculiar interest he represents. Whether he is a lawyer, a merchant, a landowner, or a retired civil servant, he has very little time and interest to take up subjects in Parliament which he can have no knowledge of, especially when he has more urgent questions nearer home requiring his immediate attention. In this regard also a notable change has been made by the Act of 1919. Standing Committees of Parliament have been instituted to keep the British Parliament, informed of all matters relating to India; and this necessarily helps to create a superior standard of information relative to this country. If the British Parliament cannot even now pay any close attention to Indian administrative details, it is because of the growing complexity and variety of legislative business in Britain herself.

V. The Changing Situation and its Causes.

Of late, however, the situation as described above, has undergone some slight modification for the following reasons:—

(1) Ever since the Golden Jubilee of the late Queen in 1887, when British citizens from all over the globe assembled in London to celebrate the fiftieth anniversary of the reign of their beloved sovereign, English people began to take some direct interest in the greatness as well as in the latent power of their vast Empire. Previous to that day, the great bulk of public opinion in England regarded colonies and distant dependencies as costly luxuries, which England would lose nothing in

giving up altogether. Perhaps the charters of Self-Government to the colonies, which were such a marked feature of the nineteenth century British imperial politics, were the result of this lurking distrust—itself the child of the experience gained from the American colonies in the eighteenth century—of distant and disconnected colonies, rather than of any avowed preference for or belief in the merits of Self-Government by the colonies. Even if this were not true, it is a universally acknowledged fact that the interest of the average Britisher in the Empire on which the sun never sets was, to say the least, very slight before 1887. From that day, however, opinion has changed. The change is as far reaching in effects as it is revolutionary in character. It has been brought about by the keener realisation of the rivalry of foreign countries in the fields of trade and industry. Britain, once supreme for nearly the whole century, is already finding some of her practical monopolies threatened by the growth of new and vigorous powers like the United States of America or the old German Empire. If England is to retain her old position as the workshop, the carrier and the banker of the world, she must put forth all the efforts she is capable of. That she has resources much more vast than any of her rivals was realised for the first time when men from the different parts of the Empire met in London in 1887 to celebrate the Golden Jubilee of their common Sovereign, and to realise their common citizenship. The necessity to organise and exploit these resources, to co-ordinate and focus the efforts and energies of the whole Empire on the one task of maintaining the old supremacy made English people look closer into the problems of the Empire. Indirectly, therefore, since that date along with the colonies, India began to loom larger before the British public, not only as the most important part of the British Empire both in men and material, but also as a part whose problems were unique; and whose problems, unless they were solved satisfactorily, would prevent the closer welding together of the different parts of the Empire. The welcome that the first Indian member—Mr. Dadabhai Naoroji—met with in the British Parliament in 1892 was but an indication of the

realisation of its imperial responsibility by the British Legislature.

(2) There are other factors also which have helped to increase in recent years Parliamentary attention to Indian questions. Among these, we may reckon as the chief the growing class of the retired servants of the Government of India in England, who cannot forget the fields of their early triumphs or griefs, and whose efforts, therefore, result in attracting more and more attention every day to Indian questions. Whatever side they adopt, whether in Parliament like the late Sir Henry Cotton, or in the Press, or as authors of more permanent literature relating to India, they all serve in their own several ways the land where their prime of manhood was passed. While this class of retired Anglo-Indian officials provides information relating to Indian problems, there is steadily growing up another class of English Members of Parliament who come to the same questions from altogether different motives, and who view these questions from altogether a different stand-point. Elected by the public who look upon him as their own special deputy to the Imperial Parliament, the average M. P. is, however, shut out, by the growth of the party system, altogether from any chance of winning distinction in domestic politics. The field of domestic politics, in which the constituents are directly interested, is dominated, almost exclusively, by the towering personalities of the party leaders in England. If the average Member of Parliament has any ambition to be known to the constituency—if he has any idea to rise one day to the ministerial or cabinet rank, he must find some other fields of activity—new as well as useful—which he should make it his task to make interesting to his leaders, and even to the British electorate. These fields of activity are supplied by the outlying parts of the Empire, chief among which is India, who is entirely voiceless in the supreme council of the Empire. Her interests, therefore, may well be championed, not without hope of profit to themselves, by this class of aspiring Members of Parliament. They receive not only considerable encouragement by the frequent demonstrations of gratitude by the peoples of India,

but substantial help from those educated Indians who are visiting England for profit or pleasure or education in greater and greater numbers every year. Facilities in the means of communication have not only resulted in bringing the different parts of the Empire together; they have made interchange of views and the combination of effort through the identity of interest much more feasible.

Hence at the present day, the interest taken in Indian questions by the British Parliament, as well as by the English public, is appreciably greater than ten years ago. There is no doubt a great deal of ignorance or indifference still prevailing among the average Members of Parliament on Indian questions. And there is still a much greater ignorance on these matters among the British public at large. It is also true that in some cases, and notably in some economic questions, the interests of India are apparently opposed to those of England. But when all allowance has been made for these factors, it must be admitted that India is trying more and more to attract the attention of the British Parliament. It is an interesting question as to what would be the relative position of the Government of India and the British Parliament, as representative institutions are introduced in this country in ever increasing proportions, till India becomes as much a Self-Governing country as Australia or Canada. If representative institutions take a deep root in this country, and the Government of India become national in tone and in character as well as in name, their present position of complete subordination to the Government of England would be found to be impossible to maintain; and we shall cease to look for improvement from a distant, incompetent, partisan assembly, when all the improvements we desire we can effect ourselves.

VI. Means to attract Parliamentary Notice.

The realisation of the complete sovereignty of the English Parliament over India has made the problem of attracting greater and greater attention of that body to Indian questions of the utmost importance in Indian politics. It was realised long before the present aspirations for Self-Government had taken root that any change in the fundamental principles of Government in India could only come from England. In the day of the Company, when the princes and people of India had understood the real character of that body, appeals to Parliament or the Crown in England were not unknown. The impecunious Nawab of the Carnatic, for instance, even when he was defeated in a suit against the Company, could obtain a representative of the English Crown to his court, and thus frustrate many a design of Lord Wellesley (1793-99). In those days such an appeal to the ultimate source of all authority in India could, however, from the very nature of the case, be within the means of a very small section of the community in this country. With the transfer of the Government to the Crown, even this thin screen of independent authority vanished; and the governing authorities in India stood out directly as the servants of the British Crown, and as such under the control of the British Parliament. As education made progress among the people of India; as the ideals of Government cherished by the English people and taught by the English history began to be assimilated; and as the true position of the powers in India came to be fully realised, organised efforts were set afoot to reach at the very fountain-head, and there seek a change in the basic principles of government in this country.

The earliest and the most important of these efforts,—one not altogether abandoned,—was to try and educate the English public into a sense of India's growing need to meet which the established authorities of Government in India were alike unable and incompetent by their training, their temperament, and their general environment. With this view an organ of the

advanced Indian opinion was established, and representative Indians were often sent to England to rouse the public in that country. This method, though intrinsically sound, could only yield results after a length of time. Besides, it was not impossible to misinterpret the object of such an agitation in sympathy with the corresponding agitation in India. The aim of such an activity was not, and could not have been, to induce Parliament to interfere in the details of administration in India: Parliament could not, from the nature of the case, interfere without belittling itself. What was desired was to induce Parliament to make such a radical alteration in the maxims of Government as would be more in harmony with the changed conditions of India, and as would save it from all subsequent appeal for reform in details. The very magnitude of such a demand could not but require time to be accomplished. Those who have constituted themselves the guardians of the welfare of so many of their fellow-creatures cannot but hesitate before acceding to a change which, while absolving them from all further liability and responsibility, might not bring the promised improvement in the task. Until Parliament,—or rather the English public,—is convinced that the change desired is both salutary and feasible, it could not abdicate its authority without being false to itself. The clearest and the most conclusive evidence must therefore be laid before Parliament before such an alteration can be expected; and to do that time would have to be allowed.

Perhaps it was thought to be one form of this evidence, that Indians should seek election for a seat in the British Parliament; and from their seat in that house, and by their work in that assembly, convince the people of England of the fitness of the sons of India to govern their own country. So far three successful attempts of this kind have been made. These gentlemen were elected by English constituencies; and their presence in the House of Commons served to attract the attention of Parliament to Indian questions. But it would be a mistake to see in this success a solution of India's present

aspirations. It is neither possible nor practicable to obtain the real self-government for India by seeking a direct representation in the British Parliament. Even if the Indian members sat as the representatives of Indian constituencies, and not—like these three gentlemen—as representatives of English constituencies, their position in that body can never be so important as to assure a real popular government for Indians in India from Whitehall. For one thing, the experience of the English people of such members for Ireland is not exactly encouraging enough to induce them to try a second venture in the same direction. Such members, doomed to a perpetual minority, and anxious to achieve a particular object, can only end by becoming mercenaries, selling their votes to whoever promised the speediest accomplishment of their object. They would be in a perpetual minority, because it is hopeless to expect that in an English legislative body representation could ever be given to India on the basis of her population. Like the Irish members before them, such members from India, if they ever come into existence, could only hope to achieve their aim by trying to hold the balance between the parties in England. And even then their success is not quite secure; for they must give priority to the business nearer home,—or else they would not get the support of any party in England. If they do so it is just possible that their allies of a while ago might find unexpected difficulties in fulfilling the bargain, not for any want of good faith on their part,—though such infidelities are not unknown in politics,—but because they did not rightly gauge the strength of public opinion in England in favour of such a change. Neither England nor India can expect much from such a make-believe, mercenary, solution of the difficulties of this country.

The expedient of placing the salary of the Secretary of State for India and the charges of his establishment on the revenues of England was often suggested as the surest means of attracting the attention of the English Parliament to the affairs of India. As to the justice of such an arrangement nothing can be said against it. Not only does the analogy of the colonies suggest

it; but the share that India has borne in the defence of the Empire, for a longer period and to a much greater amount than any of the colonies,—makes it but a simple act of justice, all the more graceful on the part of England, because the burden would not be very great for England. The charges of the India Office do not exceed half a 'million sterling, while India has been contributing over 20 million sterling every year for maintaining an army which can be of service,—and has been of service in any part of the Empire. While the annual revenues of England are nearly 200 million sterling, those of India are much under a hundred. The change, however, has now been accomplished, and it remains to be seen how far the actuality tallies with expectations. The mere opportunity to Parliament to discuss, once a year, the expenses of the India Office, may, for all we know, be entirely inadequate to afford a permanent solution of all the problems of India. Such a change might bring Indian questions into the turmoil of British political parties; and the inclusion of India on the party programme in England may not prove an unmixed blessing to India. Any desire in the minds of Indians to figure on the party programme in England, any co-operation with any political party in England, is due to the belief that by so doing the ultimate goal may be reached the sooner. That goal can **never be anything else but this; that the real Government of India should be in India responsible to the people of India.** And so, though the suggestion under consideration may be an excellent one to realise that goal, it should never be confounded with the aim itself.

If the real object of the agitation in India is not lost sight of, there would be no difficulty in understanding at their proper value such other suggestions as that the India Council should be abolished. At best it is a matter of detail. As it stands to-day the India Council is of very little importance in the administration of India; but its real, original object was to serve as brake on the autocracy of the Secretary of State. To abolish it altogether is to remove this one check, however ineffective, on the absolutism

of the Secretary of State. On the other hand the proposal that the India Council should be composed of the elected representatives of India would be useless, unless the powers of the Council are increased, and its decisions by majority are made binding upon the Secretary of State on all matters without exception. In the absence of such provisions the Indian members will always have the mortification of being overruled by a man who knows nothing of the questions at issue. A frequent disregard of the wishes of the Council is sure to cause discontent in India if it ever comes to be known. Besides, if the powers of the Council are increased in this way, the real goal might be lost sight of. The effective powers of no authority in England, however constituted, should be increased at the cost of the authorities in India, if our ultimate goal is self-government in India.

In appraising all these suggestions it must be remembered that the Parliament of England can never interfere, with credit to itself and benefit to India, in the actual details of administration in India. What we want of that body, and what may justly be expected of it, if not as a price of our loyalty as a proof of her appreciation, is to abandon altogether the principles which have so far governed the Empire of India. Time was when the only champion of the Indian people was an independent, private Member of Parliament,—a Burke, a Wilberforce, a Bradlaugh. Time was when the Minister of State for India in England could well be regarded as the real and the only democratic check on the otherwise unlimited autocracy of the Indian Government,—a Canning, a Charles Wood, a Ripon. Time was when the average educated Englishman—of the type of the ordinary Civilian in India,—might be deemed more fit to govern in India than his fellow-subjects of Indian birth. His education was more liberal, his experience undoubtedly greater, his neutrality among the religion-divided peoples of India quite probable. But that day has now passed away. The English Parliament, busy with its own immediate problems, cannot play for ever the guardian of the welfare of the Indian people. It has confessed its inability to do so in the case of the colonies

planted by Englishmen, and where consequently the problems of Government could not be utterly dissimilar to the local problems of England. It cannot expect us to believe in its competency to go on being the guardian of India, when we are separated from her by thousands of miles, every one of which could give a reason for granting autonomy to India. For with the real problems of India, with our widowed virgins and our untouchable pariah, Parliament is utterly, fundamentally incompetent to deal. And perhaps that is why they never have been approached. The Secretary of State has ceased to be the democratic check that he was meant to be on the absolutism in India, and has ended by becoming the President of the narrowest oligarchy, all the more incompetent to deal with the daily newer and more complex problems of India, because the men who compose it have had experience of India as it was 25 years ago. They will maintain themselves to be right with all the dogmatism of out-of-date experts. Even the young English Civilian, actually on the spot in India, and in daily touch with all the complex problems of Indian life, cannot now claim to be a better ruler than his Indian compeer. For his one great claim to superiority is gone or is fast going. As educated India learns the wisdom of religious toleration, his supposed impartiality amidst the warring creeds of India is useless. Education and experience are no longer his monopolies as they used to be. A trial of innate ability shows no unquestioned superiority of the English over the Indian, while his sympathy with his surroundings can never equal that of his Indian colleague.

The myriad problems of India must be and can be solved only by the Indians in India. Strangers to Indian life and sentiment, animated with the nobler motives which have governed the best of Englishmen in India, may be efficient rulers, may even be good rulers—so long as the functions of the State are no more than those of a policeman. Change the ideal of the State, and no one people could govern another, especially those so utterly dissimilar in their habits and sentiments as the Indians and the English. Indians, when they come to rule in

India, may quite conceivably be no better policemen than the English—perhaps no better engineers, financiers, diplomats, lawyers, or soldiers. But they are bound to be,—in spite of themselves, in spite of their history,—immeasurably superior in all those subtle, indescribable attributes, which go to make good government as against efficient government, which help to uplift an entire people.

CHAPTER II.

The Secretary of State.

2. (1) Subject to the provisions of this Act, the Secretary of State has and performs all such or the like powers and duties relating to the Government, or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that Government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone.

(2) In particular, the Secretary of State may, subject to the provisions of this Act or rules made thereunder, superintend, direct and control all acts, operations and concerns which relate to the Government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India.

(3) The salary of the Secretary of State shall be paid out of moneys provided by Parliament, and the salaries of his under-secretaries and any other expenses of his department may be paid out of the revenues of India, or out of moneys provided by Parliament.

The Council of India.

3. (1) The Council of India shall consist of such number of members, not less than eight and not more than twelve, as the Secretary of State may determine: provided that the Council as constituted at the time of the passing of the Government of India Act, 1919, shall not be affected by this provision, but no fresh appointment or reappointment thereto shall be made in excess of the maximum prescribed for this provision.

(2) The right of filling any vacancy in the Council shall be vested in the Secretary of State.

(3) Unless at the time of an appointment to fill a vacancy in the Council one-half of the then existing members of the Council are persons who have served or resided in India for at least ten years, and have not last left India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the Council shall hold office except as by this section provided, for a term of five years : provided that the tenure of office of any person who is a member of the Council at the time of the passing of the Government of India Act, 1919, shall be the same as though that act had not been passed.

(5) The Secretary of State may, for special reasons of public advantage, reappoint for a further term of five years any member of the Council whose term of office has expired. In any such case the reasons for the reappointment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the Council shall not be capable of reappointment.

(6) Any member of the Council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the Council.

(7) Any member of the Council may be removed by His Majesty from his office on an address of both Houses of Parliament.

(8) There shall be paid to each member of the Council of India the annual salary of twelve hundred pounds : Provided that any member of the Council who was at the time of his appointment domiciled in India shall receive, in addition to the salary hereby provided, an annual subsistence allowance of six hundred pounds.

Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament.

(9) Notwithstanding anything in any act or rule, where any person in the service of the Crown in India is appointed a member of the Council before the completion of the period of such service required to entitle him to a pension or annuity, his service as such member shall, for the purpose of any pension or annuity which would have been payable to him on completion of such period, be reckoned as service under the Crown in India whilst resident in India.

4. No member of the Council of India shall be capable of sitting or voting in Parliament.

5. The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

6. (1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, shall be exercised at meetings of the Council at which such number of members are present as may be prescribed by general directions of the Secretary of State.

(2) The Council may act notwithstanding any vacancy in their number.

7. (1) The Secretary of State shall be the President of the Council of India, with power to vote.

(2) The Secretary of State in Council may appoint any member of the Council to be Vice-President thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the Council the Secretary of State, or in his absence the Vice-President, if present, or in the absence of both of them, one of the members of the Council, chosen by the members present at the meeting, shall preside.

8. Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every month.

9. (1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes at the meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

(2) In case of an equality of votes at any meeting of the Council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at the meeting of the Council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the Council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the Council, who has been present at the meeting, may require that his opinion and any reasons for it that he has stated at the meeting, be also entered in like manner.

10. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which the business of the Secretary of State in Council or the Council of India shall be transacted, and any order made or act done in accordance with such direction shall, subject to the provisions of this Act, be treated as being an order of the Secretary of State in Council.

11. Subject to the provisions of this Act the procedure for sending of orders and communications to India, and in general for correspondence between the Secretary of State and the Governor-General in Council or any local government shall be such as may be prescribed by order of the Secretary of State in Council.

12. *Omitted.*

13. *Omitted.*

14. *Omitted.*

15. When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next sitting of Parliament.

16. *Omitted.*

17. (1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of persons on that establishment, except by an Order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness, in relation to appointments to junior situations in the civil service, shall apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment.

18. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer, or servant appointed on the establishment of the Secretary of State in Council, such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representative of such persons, under the laws for the time being in force concerning superannuation and other allowances to persons having held civil offices in public service or to personal representatives of such persons.

19. In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown or the East India Company.

19. A. The Secretary of State in Council may, notwithstanding anything in this Act, by rule regulate and restrict the exercise of the powers of superin-

tendence, direction and control, vested in the Secretary of State and the Secretary of State in Council by this Act, or other wise, in such manner, as may appear necessary or expedient in order to give effect to the purposes of the Government of India. Act, 1919.

Before any rules are made under this section relating to subjects other than transferred subjects, the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but upon such approval being given, the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void but without prejudice to the validity of anything previously done thereunder.

The Secretary of State for India is the direct descendant of the Board of Control, and in matters relating to India has all the powers of the Board of Control, the Court of Directors, their Secret Committee and the Court of Proprietors. He is the constitutional adviser of the Crown in all questions relating to India, and has the power of giving orders to every officer of the Crown in India, including the Governor-General. In the rare cases, however, when His Majesty, the King-Emperor, is present in India in person, the Secretary of State is his sole constitutional adviser. The Viceroy in those circumstances is only the Governor-General; but his intimate knowledge of Indian problems entitles him to become the immediate adviser of the King more even than the Secretary of State.

We might quote an example from modern history. When the King-Emperor, by a Royal Proclamation, ordered the repeal of the Partition of Bengal, on his visit to India in 1911, he was acting more under the influence of the Governor-General than on the advice of his Secretary of State, who was consulted at a later stage.

The Secretary of State for India is appointed, like the other Secretaries of State in England, by the delivery of the Seals of office. In passing it may be noticed, as a curiosity of the English constitution, that the office of the Secretary of State is a unit in the theory of the constitutional law of England, though there are really five Secretaries of State. Hence in speaking rather abruptly in S. I. of the Secretary of State, the Act does not in any way further specify or describe him, since any Secretary of State is theoretically capable of discharging the duties of any other. Such division of work as there is in the English Secretariat is solely for the sake of administrative convenience, and has no reference to any corresponding distinction in point of law. The Secretary of State for India, however, enjoys powers and position not exactly identical with those of his colleagues. In certain matters relating to his department, he is not the absolute master like other Secretaries of State; he must act in consultation with his Council. But on the other hand his salary was, until 1919, paid not out of the revenues of England, but out of those of India, which made him enjoy almost unrestricted freedom, because Parliament, not entitled to vote his salary, scarcely concerned itself with his actions. Recently, however, by the Government of India Act 1919 to be precise, it has been provided that his salary shall be paid out of the moneys provided by Parliament, and the salaries of his Under-Secretary and any other expenses of his department may be paid out of the revenues of India or out of moneys provided by the Parliament. This is a most noteworthy and welcome change. Upto now the debates in Parliament on Indian

questions had been as scanty in attendance of members as they were barren in results. Owing to the vast mass of business nearer home, and the ignorance of its members on Indian questions, Parliament had given so far the fullest latitude to the Secretary of State in the administration of India. But now since it will have to vote his salary and part of the expenses of his department, we may reasonably expect the British Parliament to take a keener interest in Indian affairs. Parliament appoints at the beginning of each session a standing committee on Indian affairs, with members from either House, which will thus keep the supreme Imperial Legislature amply supplied with information on Indian questions which the members may employ to advantage at the annual debate. One point might be emphasised here. If the standing committee is properly to discharge its functions of a grand inquest, it must have access to any papers and documents it desires to see, and power to examine any officer including the Secretary of State himself. The first Joint Standing Committee on Indian affairs was set up by Parliament in 1921 consisting of nine members from each house. The experiment is still in its earliest stage, and therefore it is premature to speculate on the advantages accruing from the proper development of such a body.

All the charges in connection with the India Office expenses had, upto recently, been paid out of the Indian Treasury. By the Government of India Act, 1919, however, they have been divided under two heads. The agency business and the commercial transactions undertaken by the India Office on behalf of the Government of India, have been separated from the political charges. The former are to be handed over to a High Commissioner for India appointed under S. 29 A by His Majesty by an Order in Council. As at present arranged, the High Commissioner is to be an officer of the Government of India, under their orders, and entrusted with all the agency work hitherto carried on in the India Office, including purchase of stores, payment of pensions, and supervision of

Indian students abroad. But he is not quite like the High Commissioners for the Self-governing colonies; for they, besides superintending emigration from the mother country to the colonies, and doing the colony's agency work, act really as ambassadors from one equal power to another, represent the colonial point of view to the British Cabinet, and even negotiate treaties with independent states with only the nominal intervention of the British Foreign Office. To illustrate the last point:—When Canada negotiated a treaty with the United States, it was the High Commissioner that arranged and settled the terms. The Foreign Office was only asked its sanction at the final stage, and had to ratify the treaty. The High Commissioner for India has none of these functions to discharge, nor their resultant importance.

The salary of the High Commissioner, and the charges of his office, are to be paid out of the revenues of India, and all the other charges of the India Office are to be borne by the British Exchequer. But as the transfer of all the functions intended to be made over by the India Office to the High Commissioner is bound to take a long time, the charges have been roughly estimated, and a sum of £136,500 is charged upon the British revenues for five years from 1921. This includes the salary of the Secretary of State and his Parliamentary Under-Secretary, as well as an amount of £40,000 which the Welby Commission on Indian expenditure had recommended should be charged upon the British revenues. The salary of the Secretary of State is £5,000 per annum, that of the permanent Under-Secretary, and Parliamentary Under-Secretary £3,000, and £1,500 respectively. These are relatively high salaries. The most important officer in England, the Prime Minister, draws a salary of £5,000 per annum, whereas the highest officer of the crown in India, the Viceroy, draws an annual salary of Rs. 255,000 = £17,656, some of the Governors, Rs. 120,000, = £8,000 and members of the Governor-General's Executive Council Rs. 80,000 per annum = £5,333. But these disproportionately high salaries are

justified on the ground that if India is to have the services of the best of Britain's sons, she must be prepared to pay a high price.

II. Powers of the Secretary of State.

The Secretary of State has the power of giving orders to every officer in India including the Governor-General, and of directing all the business relating to the Government of India that is transacted in the United Kingdom. Every order or communication must be signed by him, and every despatch from India must likewise be addressed to him.

This theory is bound to be modified in proportion as responsible government develops in India, for Section 19 A of the new Act provides that the Secretary of State in Council may by rule regulate and restrict the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State, and the Secretary of State in Council, in such manner as may appear necessary or expedient in order to give effect to the purposes of the Government of India Act, 1919.

As Indians get a greater and greater share in the government of their own country, and as the Government of India becomes more and more responsible to the people of India, the Secretary of State is bound to sink more and more into insignificance, until his powers become shadowy, and he himself becomes only the mouthpiece of the Government of India. In respect of the Transferred Subjects, his control would be nominal only, for the real responsibility would lie with the ministers chosen from the elected representatives of the people and responsible to them. Even in the subjects reserved for the official half of the Government the supreme

control would have to be relaxed. And hence the exact share of the Secretary of State in the administration of India be limited to the discussion of past measures, enunciation of general maxims, and approval or rejection of new departures in policy started by the Government of India, until at last even that body itself comes to be Indianised wholly, with final responsibility to the people of India.

In considering the position of the Secretary of State for India, it must always be remembered that he is primarily a member of the British Cabinet. As such his interest in his department is like the interest of all the heads of other departments, who are also members of the Cabinet, in England. It is the interest of a politician, not that of an expert who knows and loves his work. A long standing convention, never broken since the Government of India was transferred from the Company to the Crown, has laid down that the Secretary of State for India in every Cabinet should be a man who has had previously no experience of or connection with India.* He is the democratic chief to control a bureaucratic organization. His position in the Cabinet—of which he is an important member either by his social position or by his political reputation—keeps him in touch with imperial questions. While to the Cabinet he is supposed to bring the knowledge relating to the local departments of India, to the India Office he brings the wider outlook, the broader policy, of an imperial statesman. The convention which keeps India altogether out of party politics may have resulted in modifying the principles of such men as Lord Morley when they went to the India Office. But in general it must be admitted that upon the bureaucratic temper of the India Office, the Parliamentary Secretary of State serves a useful brake, as he brings in an element of democratic

* There are only two exceptions. Mr. E. S. Montagu was the Under-Secretary of State, and as such had a wide acquaintance with Indian affairs before he became the Secretary of State. Lord Sinha had been a member of the Executive Council of the Governor General, and yet he was appointed Parliamentary Under-Secretary.

responsibility.† This respect for popular opinion—towards which the permanent officials in a department are openly hostile—is all the more emphasised when we remember that the Secretary of State is not only a member of the Cabinet but also a member of the British Parliament, perhaps of the House of Commons. As such, he has to be in constant touch with public opinion. He has always to be on his guard against any criticism from his colleagues in the legislative assembly; and while answering criticism, he must keep himself open to any suggestion for reform that comes from his critics. If the Secretary of State has any ambition to rise still higher in the world of English politics, it would not do for him to ignore altogether popular opinion. The authority, it is true, of Parliament as regards the Government of India is not wide in practice, and must diminish with the growth of responsible government in India. The salary of the Secretary of State and the expenses of his department never, until lately, came before Parliament for annual sanction. But yet the very fact of his presence in a democratic legislative assembly, coupled with his close relations with a body of men whose whole career, whose entire reputation, is based upon their successful carrying out of the fundamental principles of English democracy, makes him listen to criticism even when he cannot be censured.

III. The Future of the Secretary of State.

Since Parliament is providing for the gradual development of self-governing institutions, it would be highly interesting to speculate on the future of this great personage. By section 3 of the Government of India Act, 1919, the salary of the

† One should not attach too much value to this brake, as the Secretary of State is responsible not directly to the people of India but only to the British public—as trustees on behalf of the Indian people.

Secretary of State and the expenses of his department are charged on the British Exchequer, and as such will come before Parliament for annual sanction. This will make the Secretary of State more directly responsible to the British Parliament, and to the British public, without, however, affecting the growth of responsibility of the Government of India to the people of India. For the Act of 1919 also provided that the Secretary of State is to make rules to restrict the exercise of his own powers of 'superintendence, direction and control. A most possible outcome of this is that the Secretary of State will become exclusively a responsible agent of the Indian people. It is also probable that he might develop into a superior kind of special ambassador from the autonomous government of India to the equally autonomous government of England—an ambassador whose function is more that of negotiating delicate points in dispute between these two bodies, than that of a departmental chief in one of the governments. Lastly, it is conceivable that he might sink so much into insignificance that Parliament might even see the necessity of abolishing his office altogether. The future will show which of these surmises is correct. For all we know, he might end by becoming a minister for imperial affairs including all autonomous parts of the Empire.

IV. The Origin of the Council of India.

The Council of India is, in a certain limited sense, the descendant of the old Court of Directors. When in 1858 the Government of India was brought directly under the Crown, a board of advisers was found to be necessary to aid the minister of the Crown in the government of India. Under the Act of 1858 it consisted of 15 members, of whom 8 were appointed by the Crown, and the remaining 7 were to be elected, in the first instance by the Court of Directors, and afterwards by

the council itself. The members were appointed to hold office during good behaviour *i. e.* during life ; and they could only be removed by an address of both the Houses of Parliament to the Sovereign, just like the Judges in England. In 1869 the right of appointing new members as vacancies occurred in the council was vested in the Secretary of State (32 & 33 Vict., c. 97) ; the tenure of office was also changed from life, or during good behaviour, to a term of ten years, with the power of reappointment for another five years for special reasons. Twenty years later, (52 & 53 Vict., c. 65) the vacancies as they arose need not be filled, but the Secretary of State could only appoint a new member when the number of the Councillors was reduced to ten. The number of the council was still further reduced and the term of office shortened, as well as the qualifications modified, so that in 1919 the council consisted of:—

not less than ten and not more than fourteen members, appointed to hold office during a period of seven years, but re-eligible for a further term of five years for special reasons of public advantage, which must be recorded in a minute by the Secretary of State and laid before Parliament, not removable from their office during that term except by an address of both Houses of Parliament, the members to be selected from those who had either served or resided in British India for at least ten years, and who had not left India more than five years before their date of appointment.

The councillors, it may be noted, were not entitled to any pension, though by a special Act of Parliament in 1876, an exception was made in the case of Sir Henry Maine, who was given a retiring pension of £500 a year ; nor were the members of the council entitled to any compensation for the loss of office if Parliament reduced their number or otherwise dealt with the constitution of the council. The Government of

India Act, 1919, made some important changes in the constitution of the India Council, so that at the present day, the council consists of :—

- (1) Not less than *eight* and not more than *twelve* members,
- (2) appointed by the Secretary of State for India,
- (3) to hold office for *five* years,
- (4) during which term they cannot be removed from office except by an address of both Houses of Parliament, and
- (5) They are debarred from sitting and voting in Parliament.

As regards their qualifications :—

- (6) One half of the members must have served the Crown or resided in India for at least 10 years before the appointment, or been *born* in India ;
- (7) and must not have left India for more than five years before their appointment.
- (8) The Secretary of State may appoint persons with professional or other special qualifications, and may extend the term of office for special reasons.

These provisions are no great advance in the liberal direction. It is true, the number of councillors has been reduced; and perhaps, the smaller membership does render the council more compact. Besides, there is a much larger Indian element. But since the fundamental idea of the reforms of 1919 is the introduction of responsibility in the Indian Legislatures; and the consequent devolution in authority, the requirement of intimate acquaintance with Indian questions in these statutory advisers of the Secretary of State becomes relatively insignificant. It is possible that this reduction in the council is a first step towards its ultimate abolition, and that the whole establishment may be recast, until the Secretary of State himself becomes nothing but an exalted mouth-

piece of the Government of India, and might even be replaced in the unknown course of future events by the Indian High Commissioner in England.

As regards their salaries, Section 8 of the present Act lays down that each member of the Council of India is to receive an annual salary of £1,200, and members, who, at the time of their appointment, were domiciled in India, shall receive in addition an annual subsistence allowance of £600. Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament.

This change has evoked a great deal of criticism, for though in this particular case, Parliament will have to bear this extra burden, it is a wrong principle, and we have to face its effects in the demands for overseas allowance sanctioned for the European members of the public services in India, and thereby involving a very large increment in the charges of public service in this country.

V. The Composition of the Council.

If we examine critically the qualifications required for the membership of the Council of India, we find that we can divide the members of the India Council roughly speaking into four groups. **First**, and the most important as far as numbers are concerned, is the element of the retired servants of the Crown in India, who, having risen to eminence in their several departments in the service of the Crown in India, retire to their country in the fullness of time, and are there rewarded by this position of an India Councillorship. They furnish the experience gathered during their period of service, and may be taken to represent the expert opinion when questions arise affecting their several departments. The **second** element, important as evidencing the trend of recent developments, is that of the

Indians. Since 1907, it has become possible to appoint two such persons to this council. Presumably they are there to represent the views of the Indian public on the several questions that may arise relating to Indian administration. But we have no means of judging how far their opinion carried weight with the Secretary of State since the experiment was first tried; for the minutes of the proceedings are, by an unwritten convention, not made public until fifty years later. One would like to know what opinion was pronounced by the Indian members of the Council of India on questions of grave importance like the Kenya question where the honour of India was at stake; but one can only guess at it from the speeches on the subject occasionally made by the members at a later stage, or the articles contributed by them to some journals. The *third*—by no means a negligible—element consists of successful bankers, educationists, merchants etc. who are appointed to the council to furnish it with the light of experience, the maturity of judgment, which is expected to be characteristic of these men. The *last*—and never, numerically speaking, a very important element—is the element of the experts, whom the Secretary of State is at liberty to appoint in connection with some technical departments. The council consisted, at the beginning of 1923, of the following gentlemen :—

- (1) Sir Murray Hammick (Vice-President).
- (2) Sir C. S. Bayley, G. C. I. E., K. C. S. I., I. S. O.
- (3) Sir W. D. Sheppard, K. C. I. E.
- (4) General Sir Edmund Barrow, G. C. B., G. C. S. I.
- (5) Sir James Bennett Brunyate, K. C. S. I., C. I. E.
- (6) Sahebzada Aftab Ahmed Khan.
- (7) Bhupendra Nath Basu.
- (8) F. C. Goodenough.
- (9) Sir M. M. Hogg.
- (10) Dadiba Merwanji Dalal, C. I. E. (Since resigned).
- (11) Sir W. H. Vincent.

(12) Sir Edward Albert Gait, K. C. S. I., C. I. E.

(13) Sir Benjamin Robertson.

The High Commissioner for India is now Mr. Dadiba M. Dalal. Their position as councillors or advisers of the Secretary of State is one of peculiar interest. Here is a body of men avowedly qualified to pronounce a good, reasoned opinion—perhaps the best of its kind in London—on questions relating to India. They are set up to advise a man who is as avowedly entirely ignorant of Indian questions. By an unwritten convention of the English constitution, a person appointed to be the Secretary of State is usually a man who has had previously no dealings with India. If we except men who have been reappointed Secretaries of State in two or more administrations, and if we except Sir Charles Wood and Mr. Montagu, there has never been in all these years, since the transfer of the Government to the Crown, a Secretary of State who had been previously in any way connected with Indian affairs. And yet the Secretary of State has a sufficient reserve of powers to outvote and overrule, in the most important questions concerning India, the whole of his council if need be. It has been argued that the India Council would play a more important part in the conduct of affairs in India, if the Indian element in it were more efficient and representative of Indian sentiment. It is true, the Secretary of State would not lightly disregard the opinion of men well-versed in Indian affairs; and would not like to go counter to their judgment, especially in matters where their opinion is backed by the people of India. But still if he is himself a man of strong will, with a well-defined policy of his own, he has the full authority of Parliament to disregard the wishes of the Councillors in some of the most important matters relating to India. If the India Council, therefore, is to be an important factor in the administration of India, its powers must be considerably increased, and its decisions by majority must be made binding on the Secretary of State in all those matters where he is not bound to consult his council or act on their advice. Only then will the

larger Indian element be an important factor in the council. If these excessive powers of the Secretary of State are not curtailed, if he is allowed to enjoy the right of overruling his council in so many important subjects, the result can only be discontent, bitterness, as was the case in 1878, when the Secretary of State against the wishes of the whole council enforced on India a measure like the tariff policy of the Government of India, and the councillors could only give vent to their feelings in minutes of dissent.

VI. The Secretary of State and the India Council

The Secretary of State for India under the present Act is the constitutional adviser of the Crown in all matters relating to India, and directs all business about the Government of India transacted in the United Kingdom, whether in borrowing moneys, or getting servants for the Government of India. Now in all these matters, the council is expected to advise him. He is not necessarily bound to accept their views in all matters. For, every order or communication sent to India must be signed by him, and every despatch from India must likewise be addressed to him. Moreover, upto 1919, the Secretary of State could act without consulting his council in the following cases:—

- (a) In advising the Sovereign to make appointments left to his discretion, that is, in all the appointments, from the Governors of Presidencies downwards, which require the sanction of the Secretary of State, that officer need not consult his council, and if he can thus control the choice of men for the highest appointments in India, his power in the actual administration of India can be readily imagined.

- (b) Sending or receiving communications to and from India marked "Secret." Such communications chiefly related to the making of war or peace, negotiations with foreign powers, or relations with the native states. As a rule, business of this description was transacted through the Political Committee of his Council which takes the place of the old Secret Committee of the Court of Directors.*
- (c) In matters "urgent" provided he recorded his reasons for regarding them "Urgent."

In the present Act, the sections relating to "Urgent" and "Secret" matters have been omitted. But we cannot therefore conclude that in these matters the decision of a majority of the Councillors is now made binding upon the Secretary of State, or even that the Council is consulted. Even granting that the council can participate more fully now in settling the policy relative to the administration of India than before, it is open to question if its importance has really increased in view of the new devolution of authority under the present act. Besides section 29A provides for the creation of a High Commissioner, to whom is or will be delegated a good many of the powers previously exercised by the Secretary of State or the Secretary of State in Council in relation to making contracts. The whole of the Agency business of the India office will, therefore, be practically transferred to him, and the utility of the Council would be thus greatly circumscribed.

Though the Secretary of State can overrule his council in some of the most important matters relating to India, there are other cases no doubt where the decision of the majority is binding upon him. These are :—

* A notable example is to be found in Morley's Recollections. Mr. Sinha, as he then was, wished to be consulted in some discussion before the Government of India but was not allowed to do so. He objected on the ground that he was a full member, and as such had every right to be heard. Morley seems to have resented this attitude of the first Indian in the Executive Council, but that gentleman having shortly afterwards resigned, the issue was not decided, and of course never made public.

- (1) The appropriation of the revenues of India or property.
- (2) Purchase, sale or mortgage of property.
- (3) The exercising of powers of entering into contracts subject to the provisions regarding the appointment of a High Commissioner for India.
- (5) The alteration of salaries, furlough rules etc.
- (4) Approving rules for making assurances in India.
- (6) Appointments of natives of India to offices reserved for the Indian Civil Service and the making of provisional appointments to the Council of the Governor-General.

But all these are matters on which, normally speaking, there is very little probability of a difference of opinion arising between men of common sense. They involve no question of principle likely to divide such men as the council is generally composed of. And, therefore, the provision that the Secretary of State cannot act without the support of a majority of his council in such cases, has at best but an academic importance.

If we leave aside those cases on the one hand in which the Secretary of State must consult his council and abide by a decision of the majority of his council, and on the other hand those other and by far the most important cases in which he need not consult his council, the rest of the ordinary business of the administration is, carried on by the Secretary of State in consultation with his council. But it does not mean that in such ordinary cases, even though he has to consult his council, he should abide by the opinion of a majority. Wherever he is not bound by law to have a majority of his council to support him, there is nothing to prevent the Secretary of State from taking a decision against the views of the council—even of the whole council. The utmost that the council can demand is that their views, and the reasons for those views, should be entered on the records of the council, with some faint hope that one day,

when the public should come to know of their transactions, it should be able to apportion the blame or the merit to the right persons. Hence it follows that the position of the Secretary of State carries with it great powers which practically make him absolute in the government of India. He has an advisory council, but the peculiar position of that body prevents it from being of any effective check upon the powers of the Secretary of State. But though by tradition, convention, as well as by specific legislative enactment, the margin of powers still left to the Secretary of State is very considerable, it is evident that the tendency of the day is rather to restrict than to exaggerate these powers. S. 19 A of the latest Constitutional Act relative to the Governance of India enjoins upon the Secretary of State to make rules and restrict his own powers of superintendence, direction and control of the Government; and it would be no undue stretch of the imagination to conclude that, should the political evolution of India continue on the course hitherto followed, the powers and authority of the Secretary of State for India must necessarily suffer a decline as representative institutions and responsible Government grow in India.

VII. Control of the Secretary of State over the Council.

The Secretary of State can control the council in more than one way.

1. He has the right to fill any vacancy that may be caused in the council by the death, or resignation, or the expiry of the term of office of a councillor [S.3 (2)]. True, he has not the right to remove a councillor, and he cannot therefore at any given time create his council to suit his views. It is also probable that the security of tenure given to the India councillors makes it impossible that during the tenure of office of the Secretary of State by one individual, the whole council would

or could be renovated by that individual to suit his tastes. The fluctuations in English politics, and the continual transfer of the leading politicians from department to department, make the average tenure of office of a Secretary of State by any one individual never longer than the tenure of his councillors. Including reappointments of the same individual, there have been in the sixtyfive years that have elapsed since the transfer of the Government to the Crown, twenty such Secretaries of State, or an average duration of office of each Secretary of State for slightly over two years and a half, while the normal duration of a councillor's office is now five years. But still if all allowance is made for this, the fact remains that the power of appointment vested in the Secretary of State gives him a great influence on his council. Apart from gratitude, the force of which in the cases of such independent men as the councillors of India may be negligible, there is always the possibility of similarity of views influencing a Secretary of State in choosing his councillors. And particularly his power to appoint experts in his council is bound to give him a great influence on his Council.

[*N. B.*—This power to appoint experts to the council is not specifically given by this Act. But it was conferred on the Secretary of State by 39 & 40 Vict. c. 7; and as this Act has not been repealed by the present Act we may take it that the power remains. The provisions of that Act have been thus summed up by Courtney Ilbert:—

“The Secretary of State may also, if he thinks fit, appoint any person having professional or other peculiar qualifications, to be a member of the Council of India during good behaviour. (In view of the very general language of S. 3 (4) of this Act it would seem as though such a member also can only be appointed for a period of 7 years, or re-appointed for special reasons for another period of 5 years, or in all twelve years, and not for life.) The special reasons for every such appointment must be stated in a minute signed by the Secretary of State and laid

before both Houses of Parliament. Not more than three persons so appointed may be members of the council at the same time. If a member so appointed resigns his office, and has at the date of his resignation been a member of the council for more than ten years, the King may, by warrant under his sign manual, countersigned by the Chancellor of the Exchequer, grant to him, out of the revenues of India, a retiring pension during life of five hundred pounds." He adds in a note, "This exceptional power was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to his case."

(2) The mode of conducting the business in the Council also helps to increase the powers of the Secretary of State. As a rule the council is divided into committees as nearly as possible corresponding to the departments of Government. To each committee are appointed four or five councillors, with some consideration of their special aptitude for the subjects allotted to each particular committee. It is easier to influence a small body of men, however experienced or obstinate they may be, than to influence a larger body, especially if they all agree in a particular opinion, and are men of status. And even if this was not always feasible, the system of working by committees is the surest way of creating difference of opinion and using that for one's own object. Provided the Secretary of State can find either the council as a whole to agree with him, or the committee to adopt his side of the question, he can always have his way; for the support of the council may be represented, if it suits him so to represent it, as the support of common sense against the narrow-minded view of the experts, the committee being regarded as experts of the narrowest views; and if the committee agrees with him and the council as a whole differs from him, he can claim the support of what would now be represented as the sound practical opinion of the men who know their business. The council meets at least once a month, and a quorum of such members as may be prescribed by the general direction of the Secretary of State is required. At these

meetings the reports of the different committees on different questions are considered in the council. This procedure of transacting business through the committees is of course convenient, but it does weaken the practical utility of the council as a check upon the Secretary of State. The proposal in July 1914 to give this procedure, a matter of convenience, the force of law would have perpetuated a system resulting in the practical impotence of the council. It still remains a matter of convenience regulated by rules made by the Secretary of State.

3. Apart from these modes of controlling the council, the Secretary of State has large reserves of powers behind him which would in any case render the council's opposition, even if it makes one, nugatory. In some of the most important questions, such as making war or peace, or conducting foreign relations, or cases of urgent emergencies, the Secretary of State need not consult his council, or even if he does so, he is not bound to accept the advice of his council. Such powers cannot but make the Secretary of State the absolute chief of his department, even though he has been furnished with constitutional advisers.

4. His position is further strengthened by the monopoly of information. The members of the council have no means of collecting materials for pronouncing an opinion upon any question beyond the information that the Secretary of State places at their disposal, or beyond such information as they can get in common with the ordinary public from the periodical press. Says Sir John Strachey. "Such questions as the Afgan war, negotiations with Russia and the Amir of Kabul regarding the affairs of Afganistan, or the annexation of Burma do not come before the council. Its members have not only no powers of interference, but they have no recognised means of obtaining information in regard to such subjects other than those of the general public." Wanting in information, they can never make up their minds on some of the most important questions. In this respect, the present position of the council differs radically from that of the

Court of Directors of the East India Company, even after they were superceded by the Board of Control from 1784. The present Council of India can only offer an opinion on matters which the Secretary of State chooses to bring before them, while the Court of Directors received in the first instance all despatches sent from India, and sent in their own name all the despatches from England to India.

5. The Secretary of State, in all matters when he goes counter to the opinion of a majority of his council, can always make a show of independent, unbiassed judgment. The fact that at least half the members of the council have been for a long time connected with India, and have had, in their period of service or residence in India, occasions for crystallising their information on certain matters,—perhaps for becoming partisans on certain questions,—can often be adduced by the Secretary of State as a reason to discredit their judgment. Unlike them he comes to his office with an open mind. A partisan himself in English politics, he claims an entirely unbiassed judgment in Indian affairs. For he comes to his office with no preconceived notions, nor prejudices nor pre-possessions. Such a man, himself of assured status and acknowledged experience in the politics of his own country, may reasonably claim that on questions of fundamental principles, he is a better judge than men who are likely to be partisan, or prejudiced. Besides, his position as the representative of the English democracy at the head of the Indian bureaucracy may well induce him to discount the opinion of a body of men, who could not be in touch with the latest information about Indian questions, in spite of their long experience; who have perhaps left India some years ago, and whose experience therefore of India is likely to be five years out of date; while he himself, coming new to his office, has all the desire to study at first hand all the questions of his department and has every facility to make his knowledge upto date.

6. But the causes which make the Secretary of State supreme in the council are still deeper. His power over appoint-

ments, his monopoly of information, the peculiar mode of conducting business, and of using an independent judgment are all but indications of those deeper springs of action, which, because they are seldom brought to light, not the less exist. The Secretary of State is a member of the British Cabinet, and also of the British Parliament. To his department, he brings not only an open mind, but the long experience and wider outlook of the Imperial Cabinet, and the democratic temperament of the British Parliament. If an occasion should ever arise when the Secretary of State finds himself obliged to disagree with a majority of his council, he can always in the last resource plead in his favour the support of the Cabinet, and also if necessary that of the British Parliament.* In questions of policy a man who can speak before his colleagues, who have no other ways of making their opinion known to the public, with the united authority of the Cabinet and the Parliament behind his back, who can refuse to justify or explain a policy, when questioned in Parliament or when criticised by the Government, unless his view of the case is accepted, is bound to create a deep impression upon those colleagues. Hence even in those cases where the Secretary of State is by law bound to have a majority of the council supporting him, his views, should they differ from those of the majority of the council, are bound to command respect, if not from the intrinsic value of those views, at least from the position and the power of the man who maintains them.

*When Bamfield Fuller, the Lieutenant Governor of Eastern Bengal and Assam, followed a policy of his own which was not approved of by the Secretary of State, he was forced by the latter to resign. Lord Morley was a staunch upholder of the rights of the Secretary of State, and elaborated the idea that the Government of India were merely the agents of the Home Government. Several Viceroy's have strongly objected to this attitude; and rightly so: for as Mill wrote "The executive Government of India is and must be seated in India itself."

VIII. The Future of the Council.

The question has been widely debated as to whether it is beneficial to India to leave such vast powers in the absolute control of a man who, however experienced in English politics, is admittedly an amateur in Indian questions. If it was deemed wise by those who were responsible for the act of 1858, transferring the Government of the country to the Crown, to provide this responsible officer of the State with some checks, would it not be as well to make those checks effective? At the present day, the council, whenever it disagrees with the Secretary of State, however much its views may be favourable to India, is unable to make its views appreciated or respected by the Secretary of State. And there is no means by which the Council could be so reformed as to be entrusted with wider powers. Even if we suppose that the elective element were to predominate in the Council of India, or to become the sole basis of the constitution of that council, its powers would not be appreciably increased. And if they increased, the increase would not necessarily be beneficial to India. For, the questions of Indian politics are so intricate that no body of men—whether the elected representatives of India, or expert or experienced nominees of any other authority, would ever be able to give satisfactory solutions, if they are located at a distance from India. As Mill wrote "The Executive Government of India is and must be seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to criticise or review the past Acts of the Indian Government; to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred Home for approval." Citing this opinion with approval, Sir John Strachey adds, "The work of the Secretary of State is mainly confined to answering references made to him by the Government in India; and apart from great political and financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being. Some men in that position like to minimise personal

responsibility and to ask for orders of the Home Government before taking action. Others prefer to act on their own judgment, and on that of their councillors. **The Secretary of State initiates almost nothing.**" It is true Lord Minto said that the last instalment of reforms were initiated in India by the Government of India, and not by Lord Morley; but there are instances also on the other side, when the Home Government has initiated and enforced measures upon India, such as the first Afghan War or the existing tariff policy of the Government of India, or the traffic in opium.* On the whole, however, it is still true that the Secretary of State for India-in-Council confines himself ordinarily to reviewing, revising or refusing his sanction to measures or proposals referred to him from India. With this view of the functions of the Home authorities of the Indian Government, every student of political science cannot but agree. It may happen, and it has frequently happened in history, that the governing authorities of one people are situated in another; but if the ideal of government is good government,—government in the interests of the governed,—in whatever form it may be organised, that ideal would never be realised so long as it is hoped to rule a distant dependency from one headquarters in all the details of administration. And especially is this true of a dependency like India which is so utterly dissimilar to England in every respect. The authors of the transfer of the Government of India to the Crown well understood this, and so they left to the Home authorities the power to advise, to criticise, to reject acts and proposals of the Government of India. The idea of providing an advisory council to the chief

The Secretary of State has a large reserve of powers of direct Government which may be and has on occasions been exercised by him; for example :—

- (1) The first Afghan War was forced upon the Government of India by their Home authorities because of the Anglo Russian conflict.
- (2) The Tariff policy based on Free Trade Principles was forced upon India in the face of opposition from the India Council; or again
- (3) The British Government insisted on putting an end to the traffic in opium as being an immoral traffic, even though all the Indian Governors and rulers had protested against this sacrifice of their revenue.

authority in England was not to strengthen the hands of the Secretary of State at the expense of the local powers, but to enable him to exercise all the better his powers of supervision direction and control. Another reason, of which the authors of the transfer were barely conscious, was the distrust of every English statesman of the time of all bureaucracies. The Council of India was to be a check, not so much on the Secretary of State, as on the Government of India. The reason for introducing such a deliberate check was obvious. The Government of India was in reality a bureaucracy; bureaucracies are bound to go astray, at any rate to ignore the views of the people; to bring about good Government some popular check,—preferably of the English type, of course,—was indispensable; but the people of India were not in a position to exert that check; hence the establishment of the Council of India consisting of men whom it would be dangerous for any power to thwart. Some such train of reasoning must have guided the men who fixed the first constitution of India under the Crown. The Council of India according to this view does duty for the people of India in checking the otherwise all-powerful Government of India. Any reform in the constitution of that council, any increase in its power, can be allowed only if we admit that the people of India are yet unfit, or unable to provide their own effective check on their Government. The need for the Council of India must disappear when the governing authorities in India become amenable to the control of the people of the country. And yet, strange to say, the principle of this reasoning does not seem to be given effect to in the Reforming Act of 1919. It is true India does not yet enjoy full responsible Government and that the Act of 1919 has made a few changes in the constitution and the powers of the India Council; but these are more or less unimportant changes, and may hardly be considered a step in the direction of the abolition of the council altogether.

We shall now just touch upon that abortive attempt made a few years ago to amend the constitution of the India Council. The Bill in question tried to reduce the number of the council-

lors, to make the inclusion of at least two Indian members a statutory requirement, to secure the appointment of the Indian members by a system of indirect election by the non-official members of the Indian legislatures, to increase the salaries of the members to £1200 a year together with an additional allowance, in the case of Indian members, of £600, to appoint one expert for a period and on conditions to be specially laid down in each case ; to simplify the procedure of the council by rules made by the Secretary of State—subject to approval by Parliament, to dispense with the meetings of the council once a week and to increase the list of “ secret ” cases with which the Secretary of State may deal without consulting his council. The Bill evoked a strong opposition both in England and in India, and it was eventually dropped. But all the same, we find many of the suggestions included in the Act of 1919. A few years after the failure of the Bill, an India Office Committee presided over by Lord Crewe revived the whole question, and made almost similar recommendations, most of which are incorporated in the reforming Act.

The reasoning, however which leads one to discount the importance of the India Council should not be construed to mean that, the people of India being able to provide their own check, there should be no connection with England in the future. Even when the people of India will be governing themselves in name as well as in fact, there will remain a strong case of keeping up connection with England; and, therefore, maintaining the Secretary of State for India, as well as, quite probably, his council. Only, in the event of the people of this country being able to impose their will on their Government, there will be no occasion for an outside power like the India Council to act their guardian. The Home authorities, under that supposition, would have no need to interfere in the internal affairs of India, their powers of direction and control being ordinarily confined to inter-colonial or foreign questions, in other words to truly Imperial matters.

IX. Indian Appointments.

As regards Indian appointments, under the Company the Court of Directors had the power to make all appointments to every office in the state in India. Since Pitt's India Act of 1784, the Directors were required to obtain the approval of the Crown in making certain appointments to the highest posts in India, though this clause was removed by an Act of 1786. The Crown, however, retained its powers of recalling, by a sign-manual order, any public officer in India; and this power was confirmed by the Charter Act of 1793 and subsequent legislation. The Directors also had a similar power of recall, and they often exercised it, as for instance in the case of Lord Ellenborough. With the transfer of the Government to the Crown, the provision was introduced as regards the power to make rules for the admission of persons to the public service of the country, which is now embodied in s. 19 of the present Act. Two points in that section call for comment. First as regards the provision about appointments in the Indian army. At least one-tenth of the total cadetships in any year are reserved for the sons of those who had served in India in the time of the Company. This is due to historical reasons. At the time of transfer the officers of the Indian army were recruited in two ways:—A certain number of cadets was appointed to Addiscombe, from which, according to their success at the college examinations, they went out to India in the engineers, artillery or infantry. Others received direct cadetships and went to India without any previous training. The Indian army was reorganised in 1860. The European army, which till then had been a separate body, was abolished; and the abolishing Act (23 & 24 Viet., c. 100) laid down that the same or equal provision for the sons of persons who had served in India shall be maintained in any scheme for the reorganisation of the Indian army. The mode of appointments to the native army was meanwhile also altered, and an order was made in 1862 by which the Secretary of State makes 20 annual appointments, from among the sons of Indian military officers to cadetships at Sandhurst

The expenses of these cadets are paid out of the revenues of India if their pecuniary circumstances are such as to require such payment. The cadets, it may be noted, need not join the Indian army after they leave Sandhurst. Another concession was also granted to the Indians by the Act of 1919 as a result of the world war. Indians may now be admitted to commissioned ranks in the army which were previously closed to them.

Another point requiring comment in this section about appointments is that all the appointments are made during the pleasure of the sovereign, though in practice the Secretary of State enters into a formal contract with persons appointed in England to the various branches of public service in India. Many of these contracts contain a clause by which the men appointed to the service are appointed for a definite term of years. The question whether, during the continuance of the stipulated term of service, the Crown can remove any public officer from his office, on the principles laid down in many cases, "in the present state of the authorities, cannot be considered free from doubt," says Sir C. Ilbert. A case in point is *Grant v. the Secretary of State for India in Council*. Grant was an officer in the service of the East India Company since 1840. On the transfer of the Indian army to the Crown, he was continued in the Indian army, and was afterwards placed compulsorily on the Pension List, being thereby obliged to retire from the army. He brought an action for damages against the defendant, but it was held that there was no cause of action as the Crown, acting through the defendant, had a general power to dismiss a military officer at its will, and no contract could be made in derogation of that power. If this case holds good the Crown can presumably dismiss any public officer at its will. This question of contracts with the Secretary of State on behalf of the Crown is considered more fully below in the comments on ss. 20-32.

PART II.

The Revenues of India.

20. (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone.

(2) There shall be charged on the revenues of India alone—

- (a) All the debts of the East India company; and
- (b) all sums of money, costs, charges and expenses which if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants liabilities existing at the commencement of that Act; and
- (c) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and
- (d) All payments under this Act, except so far as is otherwise provided for under this act.

(3) The expression "The Revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India; and in particular

- (a) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and
- (b) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any moveable or immoveable property in British India; and
- (c) all moveable or immoveable property in British India escheating or lapsing for want of an heir or successor, and all property in British India devolving as bona vacantia for want of a rightful owner.

(4) All property vested in, or arising or accruing from property vested in, His Majesty under the Government of India Act, 1858, or this Act, or to be received or disposed of by the Secretary of State in Council under this Act, shall be applied in aid of the revenues of India.

21. Subject to the provisions of this Act and rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall

be subject to the control of the Secretary of State in Council ; and no grant or appropriation of any part of these revenues, or of any property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India.

22. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces, charged upon these revenues.

23. (1) Such part of the revenues of India as are remitted to the United Kingdom and all money arising or accruing in the United Kingdom from any property or right vested in His Majesty for the purposes of the Government of India Act or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of the Act.

(2) All such revenues and money shall, except as by this section provided, be paid into the Bank of England to the credit of an account entitled "The account of the Secretary of State in Council of India."

(3) The money placed to the credit of that account shall be paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State or one of his undersecretaries or his assistant undersecretary, or signed by the accountant-general on the establishment of the Secretary of State in Council, or by one of the two senior clerks in the Department of that accountant-general and countersigned in such manner as the Secretary of State directs; and any draft or order so signed and countersigned shall effectually discharge the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may, for the payment of current demands, keep at the Bank of England such accounts as he deems expedient; and every such account shall be kept in such name and be drawn upon by such person, and in such manner, as the Secretary of State in Council directs.

(5) There shall be raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council; and every such account shall be entitled "The stock account of the Secretary of State in Council of India."

(6) Every account referred to in this section shall be a public account.

24. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of

State or one of his undersecretaries, or his assistant undersecretary, may authorise all or any of the cashiers of the Bank of England :

- (a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council, and
 - b) to purchase and accept stock for any such account, and
 - (c) to receive dividends on any stock standing to any such account;
- and by any writing signed by two members of the Council of India and countersigned as aforesaid, may direct the application of the money to be received in respect of any of the sale or dividend.

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England, and signed and countersigned as aforesaid.

25. All securities held by or lodged with the Bank of England in trust for or in account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied as may be authorised by order in writing signed by two members of the Council of India, and countersigned by the Secretary of State or one of his undersecretaries, or his assistant undersecretary, and directed to the chief cashier and the chief accountant of the Bank of England.

26. The Secretary of State in Council shall within the first fourteen days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament:—

- (a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the Government of India, distinguishing the same under the respective heads thereof;
- (b) the latest estimate of the same for the financial year last completed;
- (c) accounts of stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;
- (d) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or credited within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year.

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.

27. (1) His Majesty may, by warrant under His Royal Sign-Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorise that auditor to appoint and remove such assistants as may be specified in the warrant.

(2) The auditor shall examine and audit the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for the purposes of this Act.

(3) The Secretary of State in Council shall, by the officers and servants of his establishment, produce and lay before the auditor all such accounts, accompanied by proper vouchers for their support, and submit to his inspection all books, papers, and writings having relation thereto.

(4) The auditor may examine all such officers and servants of that establishment, being in the United Kingdom, as he thinks fit, in relation to such accounts and the receipt, expenditure or disposal of such money, stores and property, and may for that purpose, by writing signed by him, summon before him any such officer or servant.

(5) The auditor shall report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto, as he thinks fit, specially noting cases (if any) in which it appears to him that any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.

(6) The auditor shall specify in detail in his reports all sums of money; stores and property which ought to be accounted for, and are not brought into account, or have not been appropriated in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies or irregularities which may appear in the accounts, or in the authorities, vouchers, or documents having relation thereto.

(7) The auditor shall lay his reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor shall hold office during good behaviour.

(9) There shall be paid to the auditor and his assistants out of the revenues of India, or out of moneys provided by Parliament such salaries as His Majesty, by warrant signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants (notwithstanding that some of them do not hold certificates from the Civil Service Commissioners) shall, for the purposes of superannuation allowance, be in the same position as if the auditor and his assistants were on the establishment of the Secretary of State in Council.

PART III.

Property, Contracts and Liabilities.

28. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the Government of India, and raise money on any such real or personal estate by way of mortgage, or otherwise and make the proper assurances for any of those purposes, and purchase and acquire any property.

(2) Any assurance relating to real estate made by the authority of the Secretary of State in Council, may be made under the hands and seals of two members of the Council of India.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

29. (1) Subject to the provisions of this Act regarding the appointment of a High Commissioner for India the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of this Act.

(2) Any contract so made may be expressed to be made by the Secretary of State in Council,

(3) Any contract so made which, if it were made between private persons, would be by law required to be under seal, may be made, varied or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied or discharged under the hands of two members of the Council of India.

(5) Provided that any contract for or relating to the manufacture, sale, purchase, or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may, subject to such rules and restrictions as the Secretary of State in Council prescribes, be made and signed on behalf of the Secretary of State in Council by any person upon the permanent establishment of the Secretary of State in Council who is duly empowered by the Secretary of State in Council in this behalf. Contracts so made and signed shall be as valid and effectual as if made as prescribed by the foregoing provisions of this section. Particulars of all contracts so made and signed shall be laid before

the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

(6) The benefit and liability of every contract made in pursuance of this section shall pass to the Secretary of State in Council for the time being.

29 (A) His Majesty may by order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his assistants; and the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council, whether under this Act or otherwise, in relation to making contracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any local Government.

30. (1) The Governor-General in Council and any local Government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective Governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such real or personal estate by way of mortgage, or otherwise and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

(1) (a) A local Government may on behalf and in the name of the Secretary of State in Council raise money on the Security of revenues allocated to it under this Act, and make proper assurances for that purpose and rules made under this Act may provide for the conditions under which this power shall be exercisable.

(2) Every Assurance and contract made for the purposes of subsection 1 of this section shall be executed by such person and in such manner as the Governor-General in Council by resolution directs or authorises, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the government of India.

31. The Governor-General in Council, and any other person authorised by any Act passed in that behalf by the Indian Legislature may make any grant or disposition of any property in British India accruing to His Majesty by forfeiture, escheat or lapse, or by devolution as bona vacantia, to or in

favour of any relative or connection of the person from whom the property has accrued, or to or in favour of any other person.

32. (1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.

(2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858, and this Act had not been passed.

(3) The property for the time being vested in His Majesty for the purposes of the government of India shall be liable to the same judgments and executions as it would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, and this Act had not been passed.

(4) Neither the Secretary of State nor any member of the Council of India shall be personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant or engagement of the East India Company; nor shall any person executing any assurance or contract on behalf of the Secretary of State in Council be personally liable in respect thereof, but all such liabilities and all costs and damages in respect thereof, shall be borne by the revenues of India.

COMMENTS.

The Act speaks throughout of the revenues of India, when it would be more accurate to speak of the revenues of British India. It is true subsection 3 defines the revenues to include "all tributes and other payments ; but those tributes are not by nature of the ordinary revenues" of the Government, and therefore should not be regarded as part of the revenues of India. All the debts and liabilities of the East India Company in 1858 were charged against the revenues of India, and this provision of the Act of 1858 has been repeated in this Act. When we recall that the East India Company's debts were incurred for accomplishing the conquest of India, we cannot help feeling that it is unfair to charge those debts on the Indian revenues ; and critics of British administration in India may complain, with some show of justice, that while the British Crown got the rich patrimony of India, the people of India had to pay the purchase price. Again there have been charged on the revenues of India all pensions to the dispossessed princes whose territories were annexed by the British. This amount, once formidable, is now dwindling, because since 1857, many of these pensions have been discontinued on the plea that the adopted or natural heir of an original pensioner had no right to the pensions. Still even at the present day, a considerable amount is being paid by way of pension to the families of Murshidabad and Oudh in Bengal, the descendants of the Nawab of the Carnatic in Madras, and of Ranjit Singh in the Punjab, as liabilities inherited from the East India Company ; and are included under the budget of the Government of India under the head of political pensions. Payments like the subsidy to the Amir of Afghanistan are in a class by themselves ; while the pensions now decreed to the deposed rulers of Baroda or Nabha are essentially different, as they are charged on the revenues of their states which still remain non-British territory.

Under the Company Parliament had frequently passed laws to restrain what the great Canning described as "the irrepressible tendency of our Eastern empire to expand;" but they were more frequently ignored than obeyed. The revenues of India were squandered in ceaseless and costly wars, and the Company was almost always in financial difficulties. To safeguard against this irrepressible tendency again asserting itself, it was provided by the Act of 1858 that the expenditure of the revenues of India, in India or outside India, shall be subject to the control of the Secretary of State. The latter was prohibited by the same Act from making any grant of these revenues or appropriating any part thereof, or assigning any property vesting in the Crown, except by the consent of a majority of the India Council. This provision has also been incorporated in the present Act. But in practice this restraint on the powers of the Secretary of State cannot be effectively asserted. In Imperial questions, like the making of war, the Secretary of State, as member of the British Cabinet, acts in accordance with the decision of the latter; and the India Council, even if it be unanimously against such a war, has to bow to the will of the Cabinet; and cannot refuse to sanction the expenditure for war forced upon them by the Secretary of State. Thus the control of the India Council on the revenues of India is only nominal so long as the Secretary of State has the support of the British Cabinet. One wonders what would happen if the India Council remained obdurate, and refused to sanction the expenses of such a war. Would the Secretary of State, acting on his own authority, and under the plea of a sudden and urgent necessity, defray the expenses from the Indian revenues in defiance of the Council?

Another assurance, and a stronger one, against a misuse by the Secretary of State of the revenues of India for military purposes has also been made by the Act. It has been provided that without the consent of Parliament the revenues of India cannot be employed for military operations beyond the frontiers of India except for preventing or repelling an actual

invasion (s. 22.) But this is also a sufficiently vague provision to leave a margin of discretion to the Government of India and to the Secretary of State. Since the transfer of the Government of India to the Crown, there have been numerous occasions on which the spirit of this section, if not the letter, has been infringed upon. In the Afghan War of 1878, in the Burma struggle of 1886, in the Soudan campaign, and lastly during the Tibet expedition of 1904, this section and its effects were discussed in Parliament. It is not yet quite clear whether the consent of Parliament is required before the actual declaration of war; we are inclined to think it is not. The power to declare war is, by the general principle of the British constitution, vested in the Crown; and in the case of the Government of India, is vested in the crown acting through the Secretary of State and the Viceroy (S. 44 of the Act). The consent of Parliament is only needed to appropriate the revenues of India for the purpose of a war already declared. Under the circumstances, it is not unlikely that Parliament would have to give its consent even if it disapproved of the war as such.*

And all this is apart from the saving clause "except for preventing or repelling an actual invasion" for which presumably, the consent of Parliament is not required. Fighting with neighbouring tribes, especially the ever-turbulent neighbours of India, may easily be represented as an attempt to prevent a possible or to repel an actual invasion.

The revenues of India that are remitted to England, or that arise in England are to be paid into the account of the Secretary of State for India in Council at the Bank of England. This was permissible during the period when there was no Indian public bank in England. The privilege to the Bank of England of acting as the Secretary of State's bankers costs India directly and indirectly, considerable amounts: (a) directly for

*In the 2nd Afghan War (1881) Parliament subsequently voted 5 millions sterling out of a total expenditure of twenty-three crores of rupees even though it disapproved of the war.

payment to be made on account of public debt as well as such other services as printing of currency notes, postage and judicial stamps, water-mark stamp paper, dyes, etc. for the same; (b) indirectly through loss of interest on the balances and reserves deposited in the Bank of England, which, at 3 per cent per annum on ten millions on an average, would amount to £300,000. Together with direct payments, this would aggregate over half a million sterling per annum. Since the creation of the Imperial Bank with a branch in England, there is now no reason why all this banking business should not be entrusted to that Indian institution in preference to the Bank of England.

The account of the Secretary of State for India in Council cannot be drawn upon except by a draft or an order signed either by two members of the Council, and countersigned by the Secretary of State, or by one of his under-secretaries, or by the assistant under-secretary, or signed by the accountant-general of the India Office or by one of the two senior clerks in that department, and countersigned in the manner prescribed by the Secretary of State. There should also be a separate account for the stocks and property held by the Secretary of State for India in Council, that is for the securities in the Gold Standard Reserve, and the Paper Currency Reserve, or any portion of these reserves which are held in English securities. The financial accounts of India, together with a general statement of the moral and material progress of India, must be laid before Parliament at one time or another during the session; and, by the new practice, are so submitted some time between April and July, which is a considerable improvement on the previous practice of submitting them at the fag end of the Parliamentary Session. But even so, on the finances of India as a whole, there is no control of any democratic nature in or outside India. The accounts that are laid before the Parliament are for the financial year preceding that last completed, and Parliament would scarcely worry itself about revenues

expended two years back. Even if it had the time to interest itself in Indian affairs, all that it can do is to notify to the Secretary of State its disapproval of certain measures. The only serious temptation to parliament to intervene in Indian affairs is provided by S. 2 (3) of the act. The accounts of the Secretary of State are to be audited by an independent officer who must submit an independent account to both the Houses of Parliament, and whose appointment is during good behaviour. The auditor specifies in details in his reports, all sums of money, stores and property which are not accounted for, or have not been appropriated in conformity with the provisions of the law; and since all such reports are laid before the Houses of Parliament, there is thus an indirect control over the Secretary of State.

As regards the contracts by the Secretary of State several points of legal and general importance have to be noted. (1) Contracts, which by English law, if made by private individuals, would have to be made under seal, should be made under the hand and seal of two members of the Council. (2) For making all such contracts the Secretary of State must have a majority of votes with him in his Council. (3) For contracts so made the Secretary of State for India in Council is regarded as a corporation and may sue and be sued upon these contracts. (4) Neither the Secretary of State nor any member of Council is personally responsible for these contracts. (5) The Secretary of State is not in the position of a body corporate for the purpose of holding property which vests directly in the Crown, though he is in the position of a body corporate for making contracts and for suing or being sued. (6) There is a statutory remedy against the Secretary of State, which is not confined to those cases for which a petition of right will lie in England; but it would seem that only such suits,—apart from special statutory provision—may be brought against the Secretary of State as are in respect of acts done in the conduct of undertakings which might be carried on by private individuals without so-

vereign powers. (7) Hence a suit or action against the Secretary of State may sometimes be met by the plea that the act complained of was an act of state. All these points are illustrated by a few cases given below.

According to a maxim of the constitutional law of England the King can do no wrong, and so the subject in England has no remedy, not even by a petition of right. For a wrong committed in obedience or professed obedience to the Crown the remedy is against the wrong-doer himself, and not his official superior, since the ultimate superior, the Crown, is not responsible. Even for a breach of contract the remedy is not by an ordinary action, but by a petition of right, which, since the case of *R. vs. Thomas* in 1874, has been allowed in all cases of breach of contract. In the case of *Frith vs. Regina* in 1872, Frith, representing the creditor of the King of Oudh, whose territory was annexed by the East India Company in 1856, sought to recover the debt by a petition of right from the Queen as the successor of the East India Company. It was held that assuming the East India Company became liable by reason of the annexation to pay the debt, the remedy of the suppliant was against the Secretary of State for India in Council, who, under the act of 1858, was the successor of the Company, and not the Crown. It was further pointed out that even if a judgment was given for the suppliant, it would be barren since the revenues of England could not be liable to pay the claim. In the Tanjore case, (*Secretary of State in Council of India vs. Kamachee Bye Saheba* 1856. 13 Moore P.C. 22) a bill was filed on the Equity side of the Supreme Court at Madras to establish a claim as private property to certain property of which the Government had taken possession and for an account. The acts in question were done by a commissioner on behalf on the Government for taking over the administration of the Tanjore State on the death of the Raja without heirs. It was held that the annexation was made by the British Government as a sovereign power, acting through its delegate the East India Company. As such it was an act of

state to inquire into the propriety of which no court,—not even the Judicial Committee—was competent. Lord Kingsdown giving judgement in the Privy Council in that case remarked: "It is sufficient to say that even if a wrong has been done, it is a wrong for which no municipal court can afford a remedy." The principle was slightly different in *Forester & others vs. the Secretary of State for India in Council*. There the Government of India had resumed the property of Begum Sumroo on her death, and the legality of that act was questioned by her heirs. It appeared that the Begum was not quite an independent sovereign at the time of her death, but a British subject. Hence the annexation of her estate was not the annexation by arbitrary power of the territories of one sovereign power by another, but the resumption, under colour of legal title, of lands previously held from the Government by a subject under a particular tenure, on the alleged determination of that tenure. The questions in that suit, therefore, were regarded as cognisable by a municipal court. The facts in Dhulip Sing's case were very nearly the same as in the Tanjore case, and the same principles were upheld. (*Saloman vs. the Secretary of State for India in Council*, 1905, I. K. B. 613).

Apart from the acts of state, the Secretary of State as a corporate body is able to sue and be sued in respect of contracts; but in contracts of service regard must be had also to the principles regulating the tenure of a servant under the Crown. In the case of *Jehangir M. Cursetji vs. the Secretary of State for India in Council* (I. L. R. 27 Bom. 189) the plaintiff was a Huzur Deputy Collector of Poona, and for certain acts done by him he was censured by a resolution of the Government of Bombay, dated 6th November, 1899. This censure was construed by the plaintiff into a defamation, and he sued the Secretary of State for the same. It was held: (a) that the Governor of Bombay and the members of his Council are exempt by law from the jurisdiction of the High Court of Bombay for acts done in their public capacity. Hence no action lies against the

Secretary of State in respect of such acts. (b) The Secretary of State could only be sued in respect of those matters for which the East India Company could have been sued, *i. e.* matters for which private individuals and trading corporation could be sued and those matters for which there is express statutory provision. No suit would lie against the East India Company in respect of acts of state, and so no suit lies against the Secretary of State for such matters. (c) The plaintiff was a public officer, whose employment was one which could only be given to him by the sovereign or the agents of the sovereign. Such public servants hold their office at the pleasure of the sovereign, being liable to dismissal at his will and pleasure, if that power is not limited by statutory provision, as for instance in the case of the members of the Council of India. The power of dismissal includes all others powers of censure or reprimand.

We may, at the cost of some repetition, but for the sake of clearness, sum up once again the position of the Secretary of State in respect of contracts as follows:—

For the purpose making contracts the Secretary of State is a body corporate—or in the same position as a body corporate, though he is not such for holding property. Such property, as would have formerly vested in the East India Company, now vests in the Crown. [*Kinlock vs. the Secretary of States in Council* 1880, *L. S. 15 Ch. D.*] The debts due to the Secretary of State in India rank in priority of all other debts. There is a statutory remedy provided against the Secretary of State, and that remedy is not confined to those cases for which a petition of right would lie in England. But, apart from special statutory provisions, the only suits which could have been brought against the East India Company, and which can now be brought against the Secretary of State in Council, are suits in respect of acts done in the conduct of undertakings which might be carried on by private individuals. Hence if an act complained of was an act done by Secretary of State in the exercise of the sovereign power of the Crown, and on behalf of the Crown, no

court of justice would have jurisdiction to try that case. In suits or actions against the Secretary of State for breach of contracts of service, regard must also be had to the principles regulating the tenure of servants under the Crown. And the liability of the Secretary of State in Council to be sued does not deprive the Crown of its privileges by virtue of its prerogatives.

Before commencing an action against the Secretary of State notice of 2 months must be given according to S. 80 of the Civil Procedure Code of 1908.

CHAPTER III.

The Governor-General in Council.

33. Subject to the provisions of this Act and rules made thereunder, the superintendence, direction and control of the civil and military government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

The Governor-General.

34. The Governor-General of India is appointed by His Majesty by warrant under the Royal Sign Manual.

35. Omitted.

The Governor-General's Executive Council.

36. (1) The members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

(2) The number of the members of the Council shall be such as His Majesty thinks fit to appoint.

(3) Three at least of them must be persons who have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, or a pleader of a High Court of not less than ten years' standing.

(4) If any member of the Council, other than the Commander-in-chief for the time being of His Majesty's forces in India, is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

(5) Provision may be made by rules under this Act as to the qualifications to be required in respect of the members of the Governor-General's Executive Council in any case where, such provision is not made by the foregoing provisions of this section.

37. If the Commander-in-chief for the time being of His Majesty's forces in India is a member of the Governor-General's Executive Council, he shall, subject to the provisions of this Act, have rank and precedence in the council next after the Governor-General.

38. The Governor-General shall appoint a member of his Executive Council to be Vice-president thereof.

39. (1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints.

(2) At any meeting of the council the Governor-General or other person presiding and one member of the council other than the Commander-in-chief may exercise all the functions of the Governor-General in Council.

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct and when so signed shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in council.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his executive council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council, the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or any part thereof, are or may be, in the judgement of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the Governor-General may on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure; and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the council have recorded on the subject.

(4) Nothing in this section shall empower the Governor-General to do anything which he could not have lawfully done with the concurrence of his council.

42. If the Governor-General is obliged to absent himself from any meeting of the council, by indisposition or any other cause, the vice-president,

or, if he is absent, the senior member other than the Commander-in-Chief present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present:

Provided that if the Governor-General is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature; but if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor-General, when present, dissents from the majority at a meeting of the council.

43. (1) Whenever the Governor-General in Council declares that it is expedient that the Governor-General should visit any part of India unaccompanied by his executive council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the council.

(2) The Governor General during absence from his Executive Council may, if he thinks it necessary, issue, on his own authority and responsibility, any order, which might have been issued by the Governor-General in Council to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government without previously communicating the order to the local Government; and any such order shall have the same force as if made by the Governor-General in Council; but a copy of the order shall be sent forthwith to the Secretary of State and to the Local Government, with the reasons for making the order.

(3) The Secretary of State in Council may, by order, suspend until further order all or any of the powers of the Governor-General under the last foregoing subsection; and those powers shall accordingly be suspended as from the time of the receipt by the Governor-General of the order of the Secretary of State in Council.

43 (4) The Governor-General may, at his discretion, appoint from among the members of the Legislative Assembly, Council Secretaries, who shall hold office during his pleasure and discharge such duties in assisting the members of his executive Council as he may assign to them.

(3) There shall be paid to Council secretaries so appointed such salary as may be provided by the Indian legislature.

(3) A council secretary shall cease to hold office if he ceases for more than six months to be a member of the Legislative Assembly.

War and Treaties.

44. (1) The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or State dependent thereon, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee, either declare war or commence hostilities or enter into any treaty for making war against any prince or state in India or enter into any treaty for guaranteeing the possessions of any such prince or state.

(2) In any such excepted case the Governor-General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other prince or State than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possession of any prince or state except on the consideration of that prince or state actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same with the reasons therefor to the Secretary of State.

COMMENTS.

Ss. 33—44 (both inclusive).

1. Position of the Governor-General.

The provisions of this consolidating Act do not give an exhaustive statement of the powers of the Governor-General-in-Council. (1) The powers, for instance, of the Government of India, as the paramount power in India, extend beyond the limits of British India. (2) Again the Governor-General-in-Council, as representing the Crown in India, enjoys all those powers, privileges, prerogatives, and immunities appertaining to the Crown, as are appropriate to the case and consistent with the local legal system. Thus the rule is maintained that the Crown debts rank in priority of all other debts, or that the Crown is not bound by a statute unless expressly mentioned therein. *Ganpat Putaya vs. the Collector of Canara* (I. L. S.

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1, Bom. 7.) West J. said "It is a universal rule that the prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in statute. This rule of interpretation is well established, and applies not only to the statutes passed by the British, but also to the Acts of the Indian legislature framed with constant reference to the rules recognised in England." (3) The Governor-General in Council has also by delegation powers of making treaties and arrangements with Asiatic states, of exercising jurisdiction in foreign territory, and of acquiring and ceding territory. It is not quite free from doubt whether the Crown in England can cede territory to foreign powers without the consent of Parliament, though the Crown has undoubtedly the power to make treaties. It is admitted that a treaty made by the Crown in England, if it imposes any financial obligations upon the British citizens, will not be carried out unless its provisions are given effect to by an Act of Parliament. As regards other treaties involving cession of territory, recent practice has been to seek the approval of Parliament. In India, however, the power of the Governor-General-in-Council to make treaties and to cede or acquire territory thereunder has been long since recognised [*Damodar Khan vs. Deoram Kanji*, I. L. S. 1 Bom. 367; *The Taluka of Kotda Sangani vs. the State of Gondal*, A. C. 1906]. (4) The Government of India, moreover, derive certain of their powers not from the English Crown, but from the native rulers of the country whose place they have taken. Thus the rights of the Government in India in respect of lands and minerals in India are different from the similar rights of the Crown in England. The Governor-General may also be said to have the great Royal prerogative of pardoning criminals, though Ilbert says that power is doubted, since it has not been expressly conferred upon him by his warrant of appointment. This power is possessed by all colonial Governors; and the Viceroy, who is a representative of the King-Emperor par excellence, must be taken to have that power.

The Code of Criminal Procedure gives power to remit sentence, and so the question is of little practical importance.

The present authority of the Governor-General in Council is thus not the result entirely of Parliamentary enactments. No doubt the Government of India have to work under the orders of the Home Government. Pitt's India Bill laid down that the Governor-General could not, without the express authority of the Court of Directors, or of the Secret Committee, declare war or commence hostilities except for the protection of our own territories or those of the allied native rulers, and subsequent acts have made very little modification in this section; so that even at the present day, the Governor General cannot, without the authority of the Secretary of State, declare war or enter into a treaty for making war against any state in India, or for guaranteeing the possession of any such native state. Again in such matters as the reduction or increase of taxation, or measures which substantially affect the revenues; changes in the general financial policy regarding currency or debt; matters raising important administrative issues, or involving considerable, unusual or novel expenditure, the previous sanction of the Secretary of State in Council is required. But when all allowance is made for these, it still remains true that the Governor-General is the immediate ruler of the Country. He enjoys powers, as the representative of the English Crown, as the successor of the great Moghal, which few Secretaries of State can control; and besides the day his opinion can be made to appear as the opinion of the people of India, the domination of the Secretary of State must cease altogether. Again the Secretary of State is too far away from the actual seat of Government to exercise an effective control over the Viceroy; but for all that, much depends on the personality of these two entities. Owing to improved means of communication, it is now easier for the Secretary of State, if he is a masterful personality, and has a policy of his own, to make his authority felt. There are several instances

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in which even strong-minded Viceroys have had to submit to the rulings of the Secretary of State, or to resign. In 1870, there was a dispute between Lord Mayo and the Duke of Argyll, who was then Secretary of State for India, on the subject of the Punjab Canal and Drainage Bill which was not approved of by the latter. There was a hot discussion; but the battle was not fought to a finish, because of the sudden death of the Viceroy. There is no doubt, however, that the Secretary of State would have compelled the Viceroy either to submit or to resign.

Another controversy between the Secretary of State and the Viceroy took place during the administration of Lord Northbrook. The Government of India, owing to the falling exchange, [passed a Customs Act imposing duties on cotton goods imported from England. The Secretary of State was indignant, because his consent had not been previously asked, and because the act was in direct opposition to the views publicly expressed by him. He censured the Government of India, who, however, pleaded that the measure was an urgent one and delay would only mean danger to the trade of the country. But the Secretary of State remained obdurate, and called upon the Government of India to reverse their tariff policy. Lord Northbrook refused, and had to resign; and his successor Lord Lytton exercising his extraordinary powers in overriding the Council, the measure was repealed.

Even so late as during the Viceroyalty of Lord Curzon, there was a dispute between the Viceroy and the Secretary of State about the relative authority of the Governor-General and the Commander-in-Chief. Lord Curzon, finding himself overruled, had to resign. And in our own times, the decisions of the Governor-General in Council on the subject of the Turkish peace, and the rights of Indians in Kenya, were set at naught by the Secretary of State, who, as a member of the British cabinet, was acting in harmony with that august body. But the defeat or the resignation of a Viceroy

only emphasises the powers of the Secretary of State. So long as these two authorities agree, the Viceroy has a free hand, but if the Secretary of State means to assert himself, he has so far always been able to bring even the most powerful and popular Viceroy to his knees, or compel him to resign.

The Governor-General is an Imperial Officer appointed on the advice of the Prime Minister, and not on the advice of the Secretary of State, by the Crown. He is also called the Viceroy, a title frequently used in ordinary speech; but yet it has no legal authority, since it has never been employed in any act of Parliament. The first time that title was used was in the proclamation of 1858 which announced the assumption of the Government of India by the Crown. In the course of the proclamation, Lord Canning was referred to as the first Viceroy and the Governor-General. This title of Viceroy is employed frequently in the statutes of Indian Orders and public notification; and may be regarded as a title of ceremony used appropriately in connection with the said functions of the representative of His Majesty in India. He has a salary of Rs. 256,000 a year.

On his appointment, and during his tenure, the Viceroy is ex-officio Grand Master of the Indian Orders of the Star and Empire of India; and on his retirement becomes Grand Commander of either (G.C.S.I, and G.C.I.E.)

The Governor-General is usually a man who has already made his reputation in English public life. He is either a diplomatist of experience or one who has served as governor in some of the British colonies. Thus there have been diplomats like Lord Dufferin or Lord Harding; English politicians like Lords Ripon, Lansdowne, Curzon; and ex-governors of self-governing colonies like Lords Elgin and Minto. Lord Reading is an exception, being an English business-man, lawyer and politician, who had risen to the highest legal and judicial office before his appointment, and had even served

as an ambassador extraordinary to the United States during the war. Though no definite qualifications for this office have been laid down, it seems to be generally understood that the highest executive office in India shall be given to a man who has already served his apprenticeship in the service of the Crown in one department or another. It is also understood in the same way that the Governor-General shall be a man who has had previously no connection with India. Like the Secretary of State, he comes to his task perfectly new and entirely unprejudiced.

Since the transfer of the Government of this country to the Crown, the only permanent Governor-General, who had had previous experience of India, was Sir John Lawrence. But the case of Sir John stands apart. Even at the time of his appointment there was a strong opposition to the idea of an ex-civilian, with all the prejudices and preconceptions of the service, being appointed to the highest executive post under the Crown in India. That the opposition was well-founded is evident from the fact that since the time of Lord Lawrence the experiment has not been repeated. Among his successors, Lord Curzon seems to be the only man who has had any knowledge of the country and its people, prior to his appointment as Governor-General. Not as a servant of the Crown in India, but as a traveller and a student, a writer and a minister at home, he had gathered information relative to this country long before there was any chance of the greatest ambition of his life being realised. Says his historian, "Lord Curzon embarked with an equipment for his task such as few Viceroys have possessed. He had spent nearly one year at the India Office and three years at the Foreign Office. He had visited India four times and had travelled widely within its borders. He knew at first hand the North-West frontier always an object of deep anxiety." And yet even in his case some critics of his appointment argued that the very greatness of his qualifications disqualified him. The same writer con-

tinues, "Reduced to a simple formula, their contention is that the less a Viceroy-elect knows about India, the better ruler he would make, provided he has an open mind and a balanced sense of judgment. The proposition hardly bears serious examination, but it is typical of a certain school of British thought. No one maintains that a man! would be a better admiral, or a better general, or better surgeon if he was entirely without learning or special knowledge; but the task of steering the government of India through the vast and complex issues which constantly beset it, is supposed by these publicists to be best accomplished by an unprepared man with a cross-bench mind. **India cannot be properly governed upon such theories in these stormy days.....it is a mistake to think of a Viceroy as a judicial referee, surrounded by men necessarily far more competent than himself. A good Viceroy will initiate as well as adjudge.** The Indian Civil Service is the best service in the Empire, but its effect upon its members is to kill initiative in all, save the men of very strong individuality, who rarely rise to the highest place. **The head of the government must not only decide; he should also on occasion lead and direct;** and a Viceroy who realises that his office is something more than a Court of Appeal, therefore, starts with a very long advantage if he has made, as Lord Curzon had made, a serious and detailed study of Indian questions."

This long extract is adduced to show that there are two schools of opinion with regard to the qualifications of a Viceroy. One believes that only such men-selected from among the prominent public men in England-will be a success as Viceroys of India, who have had no previous knowledge of the country and its questions. The other regards only those Viceroys likely to be the best rulers for a country, with all its maze of racial and social and political and economic problems, each peculiar to itself,—who have had previous experience of the country and who have studied its problems. Between these two views the policy of the Imperial Cabinet has fluctuated, though the weight of opinion is in favour of the former course. Driven to

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its logical conclusion, the ideas of the second school would lead to the appointment only of retired Civil Servants of the Crown in India. It may, however, be safely asserted at this time that this course will never be adopted, notwithstanding the precedent of a very successful Viceroyalty under Sir John Lawrence. And there are good reasons. Thirty years of service in a country like India leaves a man—however strong-minded he may be—with strong habits of obedience and of dependence upon others for final orders. Besides, the sound principle of the British constitution, whereby the head of even such departments as the Army and the Navy are civilians without technical skill or knowledge, is equally necessary in India; and it is realised, only if the Viceroy is unacquainted with India. If the ideal of Ministerial responsibility is ever to be realised in this country, it can only be if the highest officers of the State are neither pedants nor experts. The Viceroy is the only man to-day, with the exception of his Indian colleagues in the executive Council, who brings the democratic atmosphere of the English or Colonial public life in the bureaucratic Government of India. A Viceroy who knows too much about India would never know enough to make a good chief of a nascent democracy. It is because the signs of the times have begun to be appreciated by the powers that be, that the Viceroys are chosen from among English diplomats like Lord Hardinge, or the proconsuls of the great English colonies. And the latter class of men are by far the most suitable. The hopes and aspirations of new India can be encouraged and guided only by men who have had some experience of constitutional rule in British democracies over seas.

We might here add a few words as to the social rank of the Viceroy. They are usually distinguished men drawn from the peerage, though we have an exception in the case of Sir John Lawrence, who was created a peer after his term of Viceroyalty was over, and of Lords Curzon and Hardinge who were not peers at the date of their appointment, but were created such, just before they left England to take

up the Viceroyalty. It is fitting that the highest officer of the Crown in India, the man, who, as his title implies, is a representative of the King-Emperor himself, should have a social position of his own that would enable him to deal with the highest and the noblest in the country, on a footing of equality. In spite of all democratic notions, people would naturally respect more a man who held a high position in English Society, than one who has no social status, and yet presumes to dictate to the Princes and Nobles of the land.

The idea of the Viceroys for India being selected from the Royal family of England has already been abandoned too long to require a lengthy consideration. The experiment, however, of the Duke of Connaught as the Governor-General of the Dominion of Canada, and of his son in a similar position in Africa, is too great a success, judging from reports, not to give rise to apprehension for a repetition of the same on the Indian field. The government of this country is a charge vast enough to tempt the ambition or the imagination of a Royal Prince. The traditions of constitutional rule of the English Royal family are long enough to reconcile the radical opponents of Royal Viceroys of India merely on constitutional grounds. The days, besides, are long gone by, when reasonable fears could be entertained of an ambitious and imaginative Prince of the Blood creating an independent kingdom for himself in India, if once appointed a Viceroy. And yet there are strong reasons why a Royal Viceroy might be unacceptable in India under her present circumstances. For one thing the control of the Secretary of State for India would not be so easy over a Royal Viceroy of India as over other English gentlemen—whether peers or commoners. The Government of India is yet an ill-disguised autocracy. The only check on that autocracy is that of the Secretary of State. If that check should in any way be weakened, the interests of the people of India might seriously be endangered. Even if a Royal Prince proves successful in colonies like Canada or Australia, that success

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would be no reason to repeat the experiment, for in the self-governing colonies democracy is an accomplished fact; the Governor or the Governor-General is only a constitutional monarch who can never do wrong, because he never does anything save through his constitutional advisers. In India democracy has still to grow, and the Viceroy can do much more than we are apt to think to promote or retard that growth. Besides, public criticism of Royal personages is bound to be moderate. And the Indian people—above all others—are likely to carry their moderation in this respect to extremes. At the time, therefore, when high hopes are entertained in all quarters for a new, healthy democracy in India, it would be most inopportune to appoint Royal Viceroys who quite unconsciously, quite unwillingly, perhaps in spite of themselves, might lend themselves to stifle or repress the growth of a new democracy in this old land.

II. The Duties of the Viceroy.

In one of his last speeches in India, Lord Hardinge said that to his mind the rôle of the Viceroy consisted in interpreting before the people of India the traditions of self-government of the people of England; and to interpret before the people of Great Britain—the legal and political Sovereign of India,—the wishes and aspirations of the people of this country. Though by law he is vested with the superintendence, direction and control of the whole government of India under the order of the Secretary of State, his real functions have well been summarised in this remark of Lord Hardinge's. The Viceroy does, no doubt, initiate measures whenever he is clever and hard-working as Lord Curzon, or working under special orders from Home as Lord Lytton. But the greater portion of his daily work consists in supervising, with the aid

of his Council, the work of the various provincial governments; and in directing and controlling those departments for which the Governor-General-in-Council is primarily responsible. It would be impossible for him, even if he was capable of it, to conduct in person the whole administration of this vast Empire. The actual administration is-and must be-left to the various provincial and departmental authorities. He, as the highest executive officer, with his experience of other peoples and other Governments, with his broader outlook and unprejudiced mind, must be ever ready, if not to initiate, at least to advise. He must conciliate and placate and harmonise the discordant elements of this machine. He must combine the *savoir faire* of the diplomat with the constitutional temperament of the colonial Governor. In a thousand ways a good Viceroy can fulfil his duties—besides those of actual government. He must discountenance the rapacity and turbulence of some members of the ruling race in India outside the official classes; he must encourage the native princes in improving their administration, appreciate their efforts as well as their difficulties, restrain their waywardness and punish—when necessary—their mis-rule; he must animate the dead routine of departmental work, impress upon the officials their duties as servants of the country where their position has made them masters; he must eliminate friction and promote good-will among the various races of this continent and above all, undaunted by temporary ebullition of temper, undismayed by criticism or abuse, uninfluenced by flattery, he must ever promote the true interests—social and political—of the new India. All this is outside government, and yet indispensable to make a good Viceroy a great ruler.

III. The Executive Council of the Governor-General.

The History of the Council.

The Governor-General's Council dates from 1773, if not from the earliest days of the East India Company's rule in India. Under the Regulating Act the Governor of Fort William in Bengal was made the Governor-General of Bengal, and was given a council of 4 members appointed from England to hold office for 5 years. Each of the members had the same voting power, with the exception of the Governor-General, who, as President of the council, had a casting vote. The council of the Governor-General, or to speak in technical terms, the Governor-General-in-Council, was made supreme over the other two Presidencies, which also had each their own Governor-in-council, which considerably hampered the task of administration; and so, when Lord Cornwallis was appointed Governor-General, he stipulated that he should also be made the Commander-in-chief, and that the council should be reduced to two members. Thus voting as the Commander-in-chief and as the Viceroy, he had two votes, which, with the addition of the casting vote, gave him supremacy in the council. However, provision was also made for the appointment of a Commander-in-chief in cases of emergency; and therefore, as a further safeguard, the Governor-General was given the right to overrule his council in cases of emergency. The number of the ordinary members of the council was fixed at 3 in 1793, and the Commander-in-chief could be added as an extraordinary member if specially appointed. The act of 1833 added a special member for legislation, who was entitled to sit and vote only when the council of the Governor-General (which from that day becomes the sole legislative authority for the whole of British India) met for the purpose of passing rules and regulations. In 1853 he was made a full member of the council, *i. e.* he was entitled to sit and vote at every meeting of the council no matter what the

question before the council. This feature of the council having special members for certain departments, was further extended in 1859, when the disordered state of the finances of the country required and obtained a trained financier. In 1874, the Governor-General-in-Council obtained the power, under an Act of Parliament, to appoint another member for the Public Works Department only if he thought fit. This power was not always exercised, and in 1904 the restriction limiting it to Public Works purposes was removed. In 1905 the Public Works Department was abolished, and a new Department of Commerce and Industry was created, to which was made over the bulk of the Public Works Department, *viz.*, the Railway matters, while Irrigation works were placed under the charge of the Revenue and Agriculture member. The Commander-in-Chief under the present Act may be appointed by the Secretary of State in Council as a member of the council. In practice, he is always so appointed. Before 1905 the Commander-in chief had no department under him. In virtue of the changes made in that year, the Military Department of the council was replaced by the Army and Military Supply Departments. The former was placed under the Commander-in-chief, who thus for the first time received the charge of a department. The latter was in charge of a separate member, who replaced the member in charge of the Military department. In 1909 the Military Supply Department was abolished, and the responsibility for the whole military administration passed to the Commander-in-Chief as member in charge of the Army Department. Finally, in November 1910 a sixth ordinary member was again added to take charge of the newly constituted Education Department.

At present there are seven members in the Viceroy's council.

They are :—(1) General Baron Rawlinson (Commander-in-Chief).

(2) Sir Basil Blackett K.B.E. (Finance member)

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- (3) A. C. Chatterjee, C.I.E., I.C.S. (Education.)
- (4) Sir W. M. Hailey K.C.S.I., C.I.E. (Home)
- (5) Sir B. N. Sarma (Revenue & Agriculture.)
- (6) Sir Mian Mahmud Shafiq K.C.S.I., C.I.E. (Law).
- (7) C. A. Innes C.S.I., C.I.E. (Commerce and Industry).

For the more convenient transaction of business, the Governor-General assigns specific departments to special members of the council. But each member is not therefore alone responsible for his own department. Macaulay could refuse to take upon himself the responsibility of the Afghan war, because, though he was the Law Member, he did not form part of the council. But at the present day, the council has a collective responsibility, and this practice of departmental heads is only for the sake of convenience and to secure efficiency. Formerly when all matters had to come before the whole council, some matters had to wait for twenty and thirty years before a solution could be arrived at, and the present system goes a great way in securing efficiency.

IV. Qualifications of the Members.

The qualifications of the members according to this Act are:—(1) Three of them at least must have been in the service of the Crown for at least 10 years at the date of their appointment. (2) One must be a barrister of England or Ireland or a pleader of a High Court of not less than ten years' standing or a member of the Faculty of Advocates of Scotland. (3) No ordinary member of the council can be a military officer other than the Commander-in-Chief for the time being of His Majesty's Forces in India. If, at the time of his appointment, a member is a military officer, he must resign his command; he cannot be employed in military duties during the tenure of his

office as member of the Viceregal Council. The qualifications of only 4 members are thus laid down by law, so that there is a discretion in the appointment of the remaining, who may be chosen for different qualifications. The members are appointed by Royal warrant and usually hold office for five years.

The presence of Indian gentlemen in the Viceroy's Council is not secured by any legal provision. On the other hand Indians are not by law debarred from holding these offices. There is nothing in this Act or any other Act to prevent the majority or even the entirety of the Council being composed of Indians, provided of course, they fulfil the requirements about service etc. And yet till 1910, there was not a single Indian member on the Viceroy's Council. Said Lord Morley in 1908, "The absence of an Indian member from the Viceroy's Executive Council can no longer, I think, be defended. **There is no legal obstacle or statutory exclusion.** The Secretary of State can, tomorrow, if he likes, if there be a vacancy on the Viceroy's Council, recommend His Majesty to appoint an Indian member." Lord Morley added that he would feel it his duty to advise the King to appoint an Indian, and Lord Minto, the then Viceroy, concurring in, and even suggesting the step himself, an Indian gentleman was appointed for the first time in 1910. The number has since then been increased so that we have at the present day three Indian members on the Viceroy's Council. But these are all officials acting collectively and not at all responsible to the Indian public or their elected representatives. Discretion is given to the Governor-General to appoint members of the Legislature to the post of Secretaries to the various departments, but this is only for purposes of training, and has not so far been used.

V. Character of the Council.

The council thus consists of a number of men who have distinguished themselves in the task of administration long before their appointment. At least three of the members must have been connected directly with the task of administration in India; and the others also must in one way or another have long experience of Indian problems, or special qualifications for some special department like Sir Blackett. They thus form a body of eminent men of experience and reputation, entrusted with the task of advising and assisting the Governor-General in the administration of India. The Governor-General is, as we have seen already, a novice as regards Indian problems. His councillors on the other hand are admittedly experienced in Indian questions. For those unconnected with the Government it is difficult to say what is the exact influence of the Governor-General and his councillors in the actual administration of India. Arguing on abstract principles, it would seem that in matters of every day routine, it is not probable that the Governor-General would take it upon himself to go against the considered opinion of his experienced advisers, and especially if that opinion is the opinion of the majority of his colleagues. The Governor-General has a right to overrule his Council under certain circumstances. But it is very doubtful if he ever feels the need of exercising this extraordinary power. Lord Lytton did overrule his council in the matter of the tariff policy; but that was because he was pledged to carry out the policy of the Home Government at any cost. Besides, that incident was of too peculiar a character to form a valid precedent. Again Lord Dufferin and Lord Elgin used their extraordinary powers to overrule the council on the questions of army increase and cotton excise respectively; but even so, the power is resorted to only on rare occasions. It is true the mere disuse of a legal power does not amount to its abolition; but all the same, it does show its abeyance. The prerogative of the King in England to veto Bills sent up

by Parliament, has not been specifically abolished by any Act of Parliament, and yet almost every writer on the English constitution takes it for granted that the royal veto is dead. The prerogative has been in abeyance—as far as England is concerned—for more than two centuries. It must be admitted that the presence of such a clause shows, more than anything else, the absolute, autocratic nature of the Government of India. In proportion, however, as the principles of representative Government are extended, bringing in their train the ideas of responsible government, such powers in the supreme head of the Government, however closely circumscribed, would be found to be incompatible if not altogether useless.

VI. The Council at Work.

By sub-clause (2), s. 40, power is given to the Governor-General to make rules and orders for the more convenient transaction of business in his executive council. This power, first given by the Indian Councils Act 1861, was utilised by Lord Canning to introduce some division of work in the Council. Before 1861 every question of administration had to go through the whole council, no matter what the department in which it had originated, because the council worked as a collective board, and left no power to individual members to work each for a separate department. Under the Indian Councils Act of 1861, the provisions of which have been incorporated in Sec. 40 (2) of this Act, the Governor-General can, for the more convenient transaction of business, parcel out the work of administration amongst his colleagues. By that method can be secured more convenient as well as expeditious transaction of business, though the authority of the council as a body is diminished in proportion to the increase in individual responsibility. Each member of the council is thus also the head of a Department. At the present time business of the Government of India, it

may be said, is conducted in a manner analogous to the Cabinet administration prevalent in England. The papers regarding any subject which comes up for consideration are prepared by the department concerned, and are first submitted to the member in charge of that department. The member passes his own orders in all minor cases; but in important cases, and especially in cases which concern more than one department, and where the two departments differ in opinion, or when it is proposed to overrule a Provincial Government, the member cannot pass final orders by himself. Such cases are, therefore, referred to the Governor-General. He may pass final orders in consultation only with the member in whose department the question originally arose. If he concurs with the member in charge, and the question is relatively a minor one, the usual practice would be for the Governor-General to pass the final orders, and to give the necessary directions to the secretary of the department to be worked up into a resolution. Questions involving large issues of general policy, or questions which cannot be decided without legislation of the Government of India, are referred to the whole council, and are decided by a majority in case of a difference of opinion. The council usually meets once a week but it may meet more frequently. The meetings are private and the decisions arrived at are always represented as the decisions of the Governor-General-in-Council.

• The council is divided into 8 departments. They are: (1) the Foreign Department, usually in charge of the Governor-General himself, (2) the Army Department in charge of the Commander-in-Chief since 1909, (3) the Home Department, (4) the Revenue and Agricultural Department, (5) the Commerce and Industry Department, (6) the Education Department, (7) the Finance Department and (8) the Legislative Department. Each of these Six latter departments is in the hands of one or the other members of the Council.

VII. The Work of each Department.

The Foreign Department transacts all business relating to the foreign policy of the Government of India, to the frontier tribes, and to the Native States in India. It also controls the general administration of such provinces as Ajmer-Merwara, Coorg, the North-West Frontier Province, and British Baluchistan. The Government of India have really speaking very little control over their external relations; and such control as they have is confined to the relations with the frontier powers in the North-West, such as Afghanistan and Persia; and in the North-East such as Tibet, China and Siam. The Foreign Department also deals with questions of ceremonial, and those relating to the Indian Orders, the Imperial Service Troops, the Cadet Corps, and the Chiefs' Colleges.

The **Home Department** is concerned with the work of general administration, and deals with internal politics, law and justice, police, hospitals, public houses, municipalities, Local Boards and a number of other subjects. Matters ecclesiastical are also under this department. As all these matters fall primarily within the jurisdiction of Local Governments, the work of the Home Department consists chiefly in controlling and supervising the Provincial Governments. Its share of actual administration is confined to the Government of the penal settlement of Port Blair.

The department of **Revenue and Agriculture**, created in 1871 and abolished in 1879, and reconstituted in 1881, is concerned with the administration of land revenue and agricultural enquiry, agricultural means and famine relief. The organisation of economic and scientific investigation and of measures of agricultural improvement is also in the charge of this department. The mere enunciation of its branches *e. g.* the Meteorological Department, the Survey Department, the Civil Veterinary Department, the Forest Department, will suffice to show its multifarious activities. As in the case of the Home Department

the functions here again are primarily falling within the jurisdiction of Local Governments, and so the functions of the Revenue and Agricultural Department are mainly of a supervising and controlling character. Since 1965, it has also received charge of the Irrigation branch of the Public Works Department.

The **Commerce and Industry Department**, formed in 1905, has taken over some portion of the work from other departments, and is concerned with the questions relating to the trade and manufactures of the country. It is also the department which represents the railways in the council of the Governor-General. It is concerned with the administration of the Factories, Petroleum, and Explosives Acts. Postal business, customs, statistics, printing and stationary; and everything relating to ports, shipping, and trade generally have been transferred to this from the finance department. Other functions directly connected with the trade and under this department are the Merchandise Marks Act. It controls the Post-office—an Imperial Department under a Director-General under whom are the Provincial Post-Masters—and also the Telegraph Department. It considers all labour questions, including emigration to foreign countries, as also to Assam. The control of expert mining staff, including inspection of all mines, and the matters relating to geological enquiries are made over to that department.

The **Legislative Department** was formerly a branch of the Home Department, but was constituted a separate department in 1869. It is responsible for all matters connected with the conduct of the legislative council of the Governor-General. It is also entrusted with drafting of enactments and of publishing and revising the Statute book. It also supervises the legislation of the provincial councils, and assists the other departments of the Government of India with advice on legal questions and principles. The Law-member of the council is in charge of some of the bills introduced into the Governor-

General's Council, and is a member, and usually Chairman, of the Select Committees to which those bills are referred.

The **Army Department**, is under the sole charge, since 1909, of the Commander-in-Chief. It deals with all questions relating to enlistment, pay and promotion of soldiers, volunteers, and the Royal Indian Marine, and the Indian Medical Service, ordnance and stores.

The **Education Department**, created in 1909, deals with all educational matters such as the control and establishment of universities and technical institutions, the grants-in-aid, the establishment of schools and their equipment, the extension of education etc. As all these matters fall within the jurisdiction of the various provincial governments, the work of the Department is chiefly of a supervising and controlling nature, besides the main question of formulating the educational policy of the Government of India.

The **Finance Department** deals with the general administration of Imperial Finance, with questions relating to the salaries, leave and pensions of public officers, and with currency and banking. It supervises and controls such sources of revenue as opium, excise, stamps, salt and assessed taxes. It also administers the Mint, and the Government Treasuries. One single department manages the civil accounts of both the supreme and the provincial governments. At the head of this department is the Comptroller and Auditor General who is also the Head Commissioner of paper currency. A separate branch, called the Military Finance Department, is entrusted with all questions relating to the financial administration of the Army.

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VIII. The Indian Council and the English Cabinet.

Is the Council a Cabinet? Says Sir J. Strachey : "Although the separation of departments is less complete than in England, and the authority of the member of Council much less extensive and exclusive than that of an English Secretary of State, **the members of Council are now virtually cabinet ministers**, each of whom has charge of one of the great departments of Government. Their ordinary duties are rather those of administrators than of Councillors." In spite of the writer's intimate experience of the system of the Government of India, it is difficult to accept the opinion that the Indian Council is a Cabinet in miniature. Apart from the delegation to each member of a specific department, there is no resemblance between the Council of the Governor-General and the Cabinet of Western democratic countries. On the other hand, the differences between the two are many and striking. (1) The authority of a Cabinet Minister in England or France is much wider - as Sir John himself admits - than that of a Councillor of the Viceroy of India. (2) The public actions of a Cabinet Minister in those countries, moreover, are taken by each Minister by himself, while the similar actions of the Councillors in India are invariably expressed as being the acts of the collective entity, the Governor-General-in-Council. (3) It is true that these Councillors, like the Cabinet Ministers in European countries, are members of the Legislature, apparently pursuing a uniform, pre-concerted policy, but there the resemblance ends. The councillors in India by no means hold their position in the Council, as do the Cabinet Ministers in democratic countries, because they are the acknowledged leaders of the dominant party in the Legislature. There are as yet no officially recognised parties in politics in this country. There is also no duty imposed upon Councillors to hold themselves answerable to the legislature for their acts, and to resign in the event of their acts or policies not finding favour with the legislature. (4) Hence though their acts are expressed to be in their collective names, there is no

collective responsibility. Sir Thomas Holland, it is true, resigned after the munitions affair, but though he was reported to have been advised in that transaction by two of his colleagues, no other resignations followed. There is also no Prime Minister in India—unless, indeed, we take the Viceroy to be his own Prime Minister—as is usual in all cabinets; and even if we take the Viceroy to be his own premier, there is not that bond of union between him and his colleagues as is always found between the prime minister and his cabinet colleagues in England or France, the bond of identical opinions on leading political questions of the day and of sympathetic changes of political fortune. The Viceroy is a new comer, while his colleagues are all veterans in the service of India. The Viceroy is immeasurably their superior in social position and theoretical powers, and they are his superiors in local knowledge. They do not, by any means, come to their work at the same moment, and leave it also at the same. Beyond the fact that the Viceroy usually takes charge of a department of State, and that he regulates the distribution of work among his colleagues, there is really no similarity between an English Prime Minister and the Viceroy of India. (5) The English Cabinet is a body quite unknown to the constitutional law of England. In other countries they have legal existence; but no where has constitutional law invested them with that corporate capacity which we find in the case of the Executive Council of the Viceroy. (6) The fancied resemblance to a Cabinet breaks down even when we look to points merely of detail. Thus the position of the Secretary in an Indian Department has been compared to that of the permanent Under Secretary in England. But there are important differences between the Indian Secretary to the Government and the English permanent (of course he cannot be compared to the Parliamentary) Under Secretary of State. The report of the Royal Commission on Decentralisation says:—

“The Secretary, as above stated, is present at Council meetings. He attends on the Viceroy, usually once a

week, and discusses with him all matters arising in his department, and he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the departmental member of Council. His tenure of office is usually limited to three years".

In all these respects, the position of the English permanent Under-Secretary is radically different. He cannot be present at Cabinet meetings; he has no direct access to the Prime Minister nor the right to appeal against his departmental chief;* It is thus impossible to regard the Government of India in the same light as the Cabinet Government in England. The principles which guide the working of the Indian Council have been well summarised by J. S. Mill.

"The Councils" he says in his Representative Government, "should be consultative merely in this sense, that the ultimate decision should rest undividedly with the Minister himself; but neither ought they to be looked upon, or to look upon themselves, as ciphers, or as capable of being reduced to such at his pleasure. The advisers attached to a powerful and perhaps self-willed man ought to be placed under conditions which make it impossible for them, without discredit, not to express an opinion; and impossible for him not to listen to and consider their recommendations, whether he adopts them or not. The relation which ought to exist between a chief and this description of advisers is very accurately hit by the councils of the Governor-General and those of the different presidencies in India. As a

*(Sec: 43A. of the Act of 1919, which provides for a Parliamentary Secretary in India; but the provisions of that section have not yet been given effect to; and we are therefore unable at this stage to realize how it will work in practice.

rule every member is expected to give an opinion, which is, of course, very often a simple acquiescence; but if there is difference of opinion, it is at the option of every member, and is the invariable practice, to record the reasons of his opinion; the Governor-General or Governor doing the same. In ordinary cases the decision is according to the sense of the majority. The Council, therefore, has a substantial part in the government, but if the Governor-General or Governor thinks fit, he may set aside even their unanimous opinions recording his reasons. **The result is that the chief is, individually and effectually, responsible for every act of the government?"**

No apology is needed to record at length the opinion of one of the most eminent political thinkers of the last century, who was himself for a long time in the service of the East India Company. At the time when Mill was writing this, however, the council was working as a collective board, each member in which shared equally in every act of administration. The distribution of the work of the council in different departments, each in the charge of one member, was introduced subsequently. But the principles he has laid down still hold good. It is even now recognised as a fundamental principle of the Government of India that while the Governor-General of India possesses in the last resort power to act upon his judgment, even against the unanimous opinion of his colleagues, he is also obliged to hear the opinion of his experienced councillors. And those councillors have the right to make known their opinion, not merely as regards their particular departments, but on all questions coming before the council. On account, however, of the cumbrousness of the system of collective working, the practice which prevailed under the Company was abandoned in 1861, though in form the acts of the Government of India are even now the acts of the Governor-General in Council.

It is impossible, therefore, to accept the opinion that the Indian Council is for all practical purposes a Cabinet like that of England. Those who are entitled to as much deference as Sir John Strachey have declared that the Government of India is even now conducted by a collective board or committee, in which every member—even the Viceroy—has the same powers. Says Lord Curzon:

“Never let it be forgotten that the Government of India is conducted not by an individual but by a committee. No important act can be taken without the assent of a majority of that committee. In practice this cuts both ways. The Viceroy is constantly spoken of as though he and he alone were the Government. This is, of course, unjust to his colleagues, who are equally responsible with himself, and very often deserve the credit which he unfairly obtains. On the other hand, it is sometimes unfair to him, for he may have to bear the entire responsibility for administrative acts or policies which were participated in or originated by them. **The Viceroy has no more weight in his council than any individual member of it.**”

If such a strong willed ruler as Lord Curzon could publicly utter such sentiments, there is every reason to believe that the growth of departmentalism has by no means diminished the importance of the council, or displaced old theories of Government.

The councillors must be made responsible to the legislature jointly and severally since the admitted goal of Indian Government is responsible Government. The members should only be allowed to hold office while they have the confidence of the legislature, and should be responsible to that body, and retire on a vote of censure or want of confidence by that body. They should be selected only from that party which has a majority in the Legislature.

IX. The Councils of the Governor-General and of the Secretary of State compared.

A comparison of the powers of these two great bodies shows that while in theory the council of the superior authority, the Secretary of State, appears to have wider powers, in practice, the Council of the Governor-General, the man on the spot, must of necessity have the more effective powers. (1) It is true the councillors of the Governor-General may be overruled by him in any case whenever the tranquillity, safety and interests of British India, in his opinion, require him to do so, while the India Council cannot be overruled by the Secretary of State in certain specified matters. (2) At the same time, it must be remembered that the council of the Governor-General is not excluded from any matters whether secret or urgent. (3) Again, though the tenure of office of an India councillor is definite, and though he is not removeable from office except by a joint address of both the Houses of Parliament, thus apparently enjoying a more independent position, he does not in reality enjoy the same position as the viceregal councillor whose tenure of office is less secure, because the latter is never confronted by the opposition of a man, with the influence and importance of the Secretary of State, whenever he differs from his chief. (4) The Secretary of State, moreover, in most matters, is not bound to accept the opinion of the majority of his council, even when he consults them, while the Viceroy must in most cases abide by the decision of a majority of his council.

The legal liability of the Governor-General and his councillors—and of all Governors and their councillors—is very different from those of the colonial Governor. For acts done in their official capacity the Indian Governors and their councillors are immune from any liability. They can in no way be proceeded against, or arrested or imprisoned before

the Indian High Courts. For certain specified offences, however, such as engaging in trade on their own account or receiving presents, they may be prosecuted before the King's Bench division of the High Court in London.

CHAPTER IV.

PART V.

LOCAL GOVERNMENTS.

General.

45. (1) Subject to the provisions of this Act and rules made thereunder every local government shall obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

(3) The authority of a local government is not superseded by the presence in its province of the Governor-General.

45 A. (1) Provision may be made by rules under this Act:—

- (a) for the classification of subjects, in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of local governments and legislatures from the functions of the Governor-General in Council and the Indian legislature;
- (b) for the devolution of authority in respect of provincial subjects to local governments, and for the allocation of revenues or other moneys to those governments;
- (c) for the use under the authority of the Governor-General in Council of the agency of local governments in relation to central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency; and
- (d) for the transfer from among the provincial subjects of subjects (in this Act referred to as "transferred subjects" to the administration of the Governor acting with ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration.

(2) Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may—

- (i) regulate the extent and conditions of such devolution, allocation, and transfer;
- (ii) provide for fixing the contributions payable by local governments to the Governor-General in Council, and making such contributions a first charge on allocated revenues or moneys:

- (iii) provide for constituting a finance department in any province, and regulating the functions of that department;
- (iv) provide for regulating the exercise of the authority vested in the local government of a province over members of the public services therein;
- (v) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred; and
- (vi) make such consequential and supplemental provisions as appear necessary or expedient:

Provided that without prejudice to any general power of revoking or altering rules under this Act, the rules shall not authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

(3) The powers of superintendence, direction, and control over local governments vested in the Governor-General in Council under this Act shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under this Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4) The expressions "central subjects" and "provincial subjects" as used in this Act mean subjects so classified under the rules.

Provincial subjects, other than transferred subjects, are in this Act referred to as "reserved subjects."]

Governorships.

46. [(1) The presidencies of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a governor in council, and in relation to transferred subjects (save as otherwise provided by this Act) by the governor acting with ministers appointed under this Act.

The said presidencies and provinces are in this Act referred to as "governors' provinces" and the two first named presidencies are in this Act referred to as the presidencies of Bengal and Madras.

(2) The governors of the said presidencies are appointed by His Majesty by warrant under the Royal Sign Manual, and the governors of the said provinces shall be so appointed after consultation with the Governor-General.

(3) The Secretary of State may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a council for any or all of the governors' provinces; and whilst any such order is in force the governor of the province to which the order refers shall have all the powers of the Governor thereof in Council.

47. (1) The members of a governor's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs.

(2) One at least of them must be a person who at the time of his appointment has been for at least twelve years in the service of the Crown in India.

(3) Provision may be made by rules under this Act as to the qualifications to be required in respect of members of the executive council of the governor of a province in any case where such provision is not made by the foregoing provisions of this section

48. Every governor of a province shall appoint a member of his executive council to be vice-president thereof.

49. (1) All orders and other proceedings of the government of a governor's province shall be expressed to be made by the government of the province, and shall be authenticated as the governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceeding on the ground that they were not duly made by the government of the province.

(2) The governor may make rules and orders for the more convenient transaction of business in his executive council and with his ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the government of the province.

The governor may also make rules and orders for regulating the relations between his executive council and his ministers for the purpose of the transaction of the business of the local government:

Provided that any rules or orders made for the purposes specified in this section which are repugnant to the provisions of any other rules made under this Act shall, to the extent of that repugnancy, but not otherwise, be void.

50. (1) If any difference of opinion arises on any question brought before a meeting of a governor's executive council, the Governor in Council shall be bound by the opinion and decision of the majority of those present, and if they

- (iii) provide for constituting a finance department in any province, and regulating the functions of that department;
- (iv) provide for regulating the exercise of the authority vested in the local government of a province over members of the public service therein;
- (v) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred; and
- (vi) make such consequential and supplemental provisions as appear necessary or expedient:

Provided that without prejudice to any general power of revoking or altering rules under this Act, the rules shall not authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

(3) The powers of superintendence, direction, and control over local governments vested in the Governor-General in Council under this Act shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under this Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4) The expressions "central subjects" and "provincial subjects" as used in this Act mean subjects so classified under the rules.

Provincial subjects, other than transferred subjects, are in this Act referred to as "reserved subjects."]

Governorships.

46. [(1) The presidencies of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a governor in council, and in relation to transferred subjects (save as otherwise provided by this Act) by the governor acting with ministers appointed under this Act.

The said presidencies and provinces are in this Act referred to as "governors' provinces" and the two first named presidencies are in this Act referred to as the presidencies of Bengal and Madras.

(2) The governors of the said presidencies are appointed by His Majesty by warrant under the Royal Sign Manual, and the governors of the said provinces shall be so appointed after consultation with the Governor-General.

(3) The Secretary of State may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a council for any or all of the governors' provinces; and whilst any such order is in force the governor of the province to which the order refers shall have all the powers of the Governor thereof in Council.

47. (1) The members of a governor's executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs.

(2) One at least of them must be a person who at the time of his appointment has been for at least twelve years in the service of the Crown in India.

(3) Provision may be made by rules under this Act as to the qualifications to be required in respect of members of the executive council of the governor of a province in any case where such provision is not made by the foregoing provisions of this section

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Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceeding on the ground that they were not duly made by the government of the province.

(2) The governor may make rules and orders for the more convenient transaction of business in his executive council and with his ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the government of the province.

The governor may also make rules and orders for regulating the relations between his executive council and his ministers for the purpose of the transaction of the business of the local government:

Provided that any rules or orders made for the purposes specified in this section which are repugnant to the provisions of any other rules made under this Act shall, to the extent of that repugnancy, but not otherwise, be void.

50. (1) If any difference of opinion arises on any question brought before a meeting of a governor's executive council, the Governor in Council shall be bound by the opinion and decision of the majority of those present, and if they

are equally divided the governor or other person presiding shall have a second or casting vote.

(2) Provided that, whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity or interests of his province, or of any part thereof, are or may be, in the judgment of the governor, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case the governor and the members of the council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the governor shall be signed by the governor and by those members.

(4) Nothing in this section shall empower a governor to do anything which he could not lawfully have done with the concurrence of his council.

51. If a governor is obliged to absent himself from any meeting of his executive council, by indisposition or any other cause, the vice-president, or, if he is absent, the senior member present at the meeting, shall preside thereat, with the like powers as the governor would have had if present :

Provided that if the governor is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature; but, if he declines or refuses to sign it, the like provisions shall have effect as in cases where the governor, when present, dissents from the majority at a meeting of the council.

52. (1) The governor of a governor's province may, by notification, appoint ministers, not being members of his executive council or other officials, to administer transferred subjects, and any ministers so appointed shall hold office during his pleasure.

There may be paid to any minister so appointed in any province the same salary as is payable to a member of the executive council in that province, unless a smaller salary is provided by vote of the legislative council of the province.

(2) No minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

(3) In relation to transferred subjects, the governor shall be guided by the advice of his ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice :

Provided that rules may be made under this Act for the temporary administration of a [transferred subject where, in cases of emergency, owing to a vacancy, there is no minister in charge of the subject, by such authority and in such manner as may be prescribed by the rules.

(4) The governor of a governor's province may at his discretion appoint from among the non-official members of the local legislature, council secretaries who shall hold office during his pleasure, and discharge such duties in assisting members of the executive council and ministers as he may assign to them.

There shall be paid to council secretaries so appointed such salary as may be provided by vote of the legislative council.

A council secretary shall cease to hold office if he ceases for more than six months to be a member of the legislative council.

52A. (1) The Governor-General in Council may, after obtaining an expression of opinion from the local government and the local legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new governor's province, or place part of a governor's province under the administration of a deputy-governor to be appointed by the Governor-General, and may in such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of this Act relating to governor's provinces, or provinces under a lieutenant-governor or chief commissioner, to any such new province or part of a province.

(2) The Governor-General in Council may declare any territory in British India to be a "backward tract," and may, by notification, with such sanction as aforesaid, direct that this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.

Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the governor in council to give similar directions as respects any Act of the local legislature.

52B. (1) The validity of any order made or action taken after the commencement of the Government of India Act, 1919, by the Governor-General in Council or by a local government which would have been within the powers of the Governor-General in Council or of such local government if that Act had not been passed, shall not be open to question in any legal proceedings, on the ground that by reason of any provision of that Act or this Act, or of

any rule made by virtue of any such provision, such order or action has ceased to be within the powers of the Governor-General in Council or of the government concerned.

(2) The validity of any order made or action taken by a governor acting with his ministers shall not be open to question in any legal proceedings on the ground that such order or action relates or does not relate to a transferred subject, or relates to a transferred subject of which the minister is not in charge.

Lieutenant-Governorships and other Provinces.

53. (1) The province of Burma is, subject to the provisions of this Act, governed by a lieutenant-governor.

(2) The Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a lieutenant-governor.

54. (1) A lieutenant-governor is appointed by the Governor-General with the approval of His Majesty.

(2) A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India.

55. (1) The Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, create a council in any province under a lieutenant-governor, for the purpose of assisting the lieutenant-governor in the executive government of the province, and by such notification—

- (a) make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council; and
- (b) make provision for the appointment of temporary or acting members of the council during the absence of any member from illness or otherwise, and for supplying a vacancy until it is permanently filled, and for the procedure to be adopted in case of a difference of opinion between a lieutenant-governor and his council, and in the case of equality of votes, and in the case of a lieutenant-governor being obliged to absent himself from his council by indisposition or any other cause:

Provided that, before any such notification is published, a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and if, before the expiration of that time, an address is presented to His Majesty by either House of Parliament against

the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(2) Every notification under this section shall be laid before both Houses of Parliament as soon as may be after it is made.

(3) Every member of a lieutenant-governor's executive council shall be appointed by the Governor-General, with the approval of His Majesty.

56. A lieutenant-governor who has an executive council shall appoint a member of the council to be vice-president thereof, and that vice-president shall preside at meetings of the council in the absence of the lieutenant-governor.

57. A lieutenant-governor who has an executive council may, with the consent of the Governor-General in Council, make rules and orders for more convenient transaction of business in the council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the lieutenant-governor in Council. An order made as aforesaid shall not be called into question in any legal proceedings on the ground that it was not duly made by the lieutenant-governor in council.

58. Each of the following provinces, namely, those known as the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, is, subject to the provisions of this Act, administered by a chief commissioner.

59. The Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a chief commissioner or by otherwise providing for its administration.

Boundaries.

60. The Governor-General in Council may, by notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely :—

(1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and

(2) any notification under this section may be disallowed by the Secretary of State in Council.

61. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, shall not affect the law for the time being in force in that part.

62. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras and Bombay, respectively; and any Act of Parliament, letters patent, charter, law or usage [conferring jurisdiction, power or authority within the limits of those towns respectively, shall have effect within the limits as so extended.

I. The Development of the Provincial Governments in India.

British India is divided into 8 large provinces and 7 lesser charges, each of which is termed a Local Government. The provinces are the two old Presidencies of Madras and Bombay, to which, since 1912, has been added the Presidency of Bengal; the four old Lieutenant-Governorships of the United Provinces, the Punjab, Burma, and Bihar and Orissa; the Chief Commissionerships of the Central Provinces, Assam, Ajmere-Merwara, Coorg; and the Penal Settlement of Andaman and Nicobar Islands. With the exception of Burma, which, though brought under the new regime, still remains in name and style a Lieutenant-Governorship; and of the North West Frontier Province, Ajmer, Coorg and the Andamans, all these Provinces have been raised to an equality of status as **governor's provinces**. To these was added in 1912 the Commissionership of Delhi, when that city was made the capital of the Government of India. The new Chief Commissionership was a charge created by separating the district of Delhi and the enclave of territory around it from the Punjab, and placing it under the Government of India.

Originally, the three Presidencies of Fort St. George or Madras, of Fort William or Bengal, and Bombay were centres of the East India Company, politically independent of one another. Though in point of history Madras was the oldest of the East India Company's possessions in India, the acquisition by Clive in 1765 of the Diwani of Bengal, Bihar and Orissa from the Mogul Emperor made the Presidency of Fort William the premier Presidency in India. From 1773 this practical importance was recognised also in theory, the Governor of Fort William being made the Governor-General of Bengal, and being given supremacy over other provinces, and over the Governors of Bombay and Madras. This supremacy of the Governor-General of Bengal was carried a step further in 1785, and was made permanent in 1833, when the Governor-General of Bengal was declared to be the Governor-General of India, though the same officer was also the Governor of Bengal.

The year 1833 is also remarkable in the history of the provinces in India, because in that year Parliament permitted the East India Company to erect a fourth Presidency out of the territories acquired by the Company on the north-west frontiers of Bengal, and comprising a great portion of the modern provinces of Agra and Oudh. This permissive clause of the Charter Act of 1833 was not carried into execution till 3 years later; and even then in a modified form. The territories on the north-west frontier of Bengal were erected into a Lieutenant-Governorship by notification in the gazette of February 21, 1836. They were styled the North-West Provinces upto 1901, when, in order to distinguish them from the North-West Frontier Province, formed in that year, they came to be known as the United Provinces of Agra and Oudh.

Another change came 20 years later in 1853, when the Governor-General of India was relieved from the immediate administration of the Presidency of Bengal, and a new Lieutenant Governorship was created to administer that province. Here also s. 16 of the Government of India Act gave power

to the Court of Directors, subject to the sanction of the Board of Control, to appoint a Governor for the Presidency of Fort William. Until, however, a separate Governor was appointed under that Act, the Governor-General was given power to appoint a Lieutenant-Governor. The Governor-General exercised this alternative power, and Bengal remained a Lieutenant-Governorship till 1912. The Governor-General becomes from that date, both in name as well as in fact, the Governor-General of India, and not immediately of any particular province.

The Punjab, annexed in 1849, was governed first by a board, afterwards by a Chief Commissioner, and was made a Lieutenant-Governorship in 1859. Oudh, which was annexed in 1856, was first placed in charge of a Chief Commissioner; but was later on merged in the Lieutenant-Governorship of the then North Western Province, and the modern United Provinces of Agra and Oudh. Burma was the next Lieutenant-Governorship. In 1862 the Burma provinces were known as British Burma and were administered by a Chief Commissioner. After the war of 1886 the whole province was styled Burma, and was raised to the status of a Lieutenant-Governorship in 1897. On their annexation in 1853 the territories of the Raja of Nagpur were made a separate administration, and placed under the charge of a Chief Commissioner in 1861. To them was added the district of Berar ceded by the Nizam in 1903. Assam was at first added to Bengal on its annexation in 1876; but in the same year it was detached and placed under the charge of a Chief Commissioner. In 1905 it was combined with the short-lived province of Eastern Bengal and Assam. Seven years later, however, by the decree of the King-Emperor, the partition of Bengal of 1905 was rescinded. Bengal became once more the Presidency that it was before 1833. The provinces of Bihar and Orissa became a new Lieutenant-Governorship; and Assam was once more made a separate Chief Commissioner-ship. The North-West Frontier province was created in 1901 and consisted of the districts detached from the Punjab, partly

to allow the Government of India to exercise more direct control over frontier questions, and partly to relieve the Government of the Punjab.* To them also were added a number of adjoining border tracts, over which direct influence had been exercised by the Government of India since 1892. British Baluchistan was formed into a Chief Commissionership in 1877. Coorg, conquered and annexed in 1829, is administered by the Resident of Mysore, who is also the Chief Commissioner of Coorg. So also the small British territory of Ajmere-Merwara in Rajputana, which is administered by the Agent to the Governor-General in Rajputana, being also Chief Commissioner of Ajmere. Finally, in 1912, the district of Delhi, with a territory round about it, was detached from the Punjab (to which it had been annexed after the Mutiny) and was made into a Commissionership under the immediate charge of the Government of India, who since that date have made it their capital.

II. Procedure to Create new Provinces.

The power of the Governor-General, by notification in the Gazette, and subject to the approval of the Secretary of State for India in Council, to take any part of British India under the direct authority of the Government of India, was questioned by Sir Barnes Peacock in 1852. It was therefore expressly granted by s. 3 of the Act of 1853 ; and has been embodied in s. 60 of the present Act. This power has been frequently used, *e.g.* in the case of Arracan, originally annexed to Lower Burma, taken under this authority directly under the Government of India, and annexed to British Burma in 1862, by notification. So also the Province of Assam. On the other hand in creating the Chief Commissionerships of Oudh, Central Provinces, and British Burma the procedure followed was the issue of a reso-

*The question of regrouping these areas is once again under consideration at the present time (1923).

lution, reciting the reasons for such a creation, defining the territories included in it, and specifying the staff appointed, without making any reference to any Statute. The reason for this difference in procedure is that the Government of India do not consider the section of the Act of 1858 to apply to territories already included in a Chief Commissionership, for a Chief Commissionership is already under the direct management of the Government of India. A Chief Commissioner merely administers the territory under his charge on behalf of the Governor-General in Council, and the latter does not divest himself of any of his powers in making over the administration to a Chief Commissioner. The Chief Commissioner, however, is according to Act X of 1897, s. 3 (29), a local Government, and is so considered by the present Act.*

The power to alter the boundaries of the existing provinces, by notification in the Gazette, was given by the Charter Act of 1833, s. 38. It is subject to the reservation that (a) an entire district may not be transferred from one to another province, without the previous consent of the Crown through the Secretary of State in Council; and (b) that any such notification may be disallowed by the Secretary of State. In 1878 the Government of India were advised that the Act of 1865, by which this power was first modified, enabled the Governor-General in Council to transfer territory from a Chief Commissionership to a Presidency or a Lieutenant-Governorship, but not vice versa. Both these powers are subject to the proviso that no law or regulation in force at the time of the transfer shall be altered or repealed except by law made by the Governor-General in Council.

*The [most important of these Chief Commissionerships have, however, been now made into Governor's provinces.

III. The relative Status of the Provincial Governments.

The provinces, as we have seen, are divided into Governorships, Lieutenant-Governorships, and Chief Commissionerships. This division does not by any means suggest a great difference in the powers and position enjoyed by each of these classes of provinces. For all practical purposes within his own jurisdiction each head of a Provincial Government, whether a Governor, a Lieutenant-Governor, or a Chief Commissioner enjoys very nearly the same independence and authority. In fact one might even say that the more dignified position of the Governor carries with it less actual powers,—the powers of government being shared by the Governor with his council, while the old type of Lieutenant-Governorship gave more substantial powers. Nevertheless there is some difference in the relative rank and position of each of these provinces. The difference is important because it points to the old historic distinction, because it has some practical importance even to-day, and because it throws some curious light on the question of Provincial autonomy.

IV. The Presidency Governors.

The three governorships of Madras, Bombay and Bengal have a certain superiority over all the other provinces. Not only that they are historically the oldest provinces, existing even before the Central Government itself came into existence; but this prior existence of theirs and the independent position they enjoyed at the time, is reflected even to-day in the position of their chief authorities in their relations with the Government of India. Each of these provinces is governed by a

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Governor in Council on the model of the Government of India. Their Governor, like the Viceroy, is appointed directly from England by the Crown.* He is usually a person of some importance in the social or political life of England. Like the Viceroy, the Governor is styled His Excellency; and was *virtute officii*, an extraordinary member of the Viceregal Executive Council whenever that Council assembles within the jurisdiction of his Presidency. The extraordinary membership in the Viceroy's Executive Council is now abolished by the Act of 1919. His Council, like the Council of the Governor-General, is appointed to advise and assist him in the task of administration. He has the same powers of overruling the council as the Governor-General has, in cases of emergency. The Governors have still the right of communicating directly with the Secretary of State; and also to appeal to the Secretary of State against the Government of India in cases where they differ from the Government of India, provided the appeal is transmitted to and communicated through the Government of India.† They are more independent, besides, than the other governments in such matters as their revenue settlement, or the choice of persons to certain important posts, like the nominated members of the Legislative Council for instance. Altogether their position, even to-day, contains some traces of their original equality with, and independence of, one another: but these are fast disappearing.

*While those of the other provinces, now made Governor's Provinces, are appointed by His Majesty in consultation with the Governor-General. [s. 46 (2)]. This in practice means that the governors of the other provinces may be ordinary civilians, while those of the Presidencies are independent English gentlemen.

†S. 11 of the present Act replaces the old ss. 11-14 which related to the conduct of correspondence to and from the Secretary of State and the various governments in India. It is not quite clear how this old privilege of the Presidency governors stands at the present time; but presumably under the new dispensation all the governors are made of equal status, and as such the old privilege has ceased to exist, as an exclusive privilege of the Presidency governors.

V. Lieutenant-Governors.

As, with the exception of Burma, all the old Lieutenant-Governorships have been turned, by the Act of 1919, into Governorships, the distinction between these two classes of governing authorities has lost all importance in practice. Before 1919, the Lieutenant-Governor, usually a promoted civilian towards the fag end of his career, used to be the absolute head of his province, subject only to the Governor-General in Council. An experiment was made with an executive Council for the Lieutenant-Governorship of Bihar and Orissa in 1912 ; and power was taken in the Government of India Act of 1915 to enable the Governor-General to establish executive Councils in any of the Lieutenant-Governorships by a proclamation, provided the draft proclamation had been laid before both Houses of Parliament 60 days before its coming into operation. Lord Harding's attempt, however, having met with an undeserved opposition in the House of Lords, the Act of 1919 has universalised the Council form of government in all the Governors' provinces. It is, accordingly, unnecessary to trace at length the differences between the Governorships and Lieutenant-Governorships, or to estimate the relative advantages of the Council form of government as against the absolutely proconsular government.

By s. 52A of the present Act, the Governor General in Council is authorised, with the sanction of His Majesty previously signified by the Secretary of State, to constitute a new Governor's province, and place part of a Governor's province under a deputy-governor. In so far as statutory provisions relating to Lieutenant-Governorships are concerned, that officer is appointed by the Governor-General with the approval of His Majesty, and must have been for 10 years in the service of the Crown in India at the time of his appointment. He may be assisted in his administration by an Executive Council, created

by a notification of the Governor General approved by the Secretary of State, and provided that the draft notification had been submitted to Parliament for 60 days before its coming into operation, and that no address against such a notification is presented within that period by either House to the King-Emperor.

VI. Chief Commissioners.

Next in authority to the Lieutenant-Governors are the Chief Commissioners. The title of the Chief Commissioner was adopted to distinguish the head of the administration in a minor province from the financial and judicial commissioners. It was first introduced in 1853, when John Lawrence was appointed Chief Commissioner in the Punjab and Baluchistan. The Chief Commissioners stand on a lower footing than the Lieutenant-Governors. There are 6 Chief Commissionerships those of the North-West Frontier Province, British Baluchistan, the new province of Delhi, Ajmere-Merwara, Coorg, and Andaman and Nicobar Islands. The appointment of the Chief Commissioner is not, unlike that of the Lieutenant-Governors, specifically provided for by a special Act of Parliament. The territories under their charge are, under the theory of the law, under the immediate authority and management of the Governor-General in Council, who appoints Chief Commissioners at his discretion, and delegates to them such powers as are necessary for the purpose of administration.* The Chief Commissioners of the North West Frontier Province and of British Baluchistan are officers administering territories of less magnitude. They are at the same time agents to the Governor-General for dealing with the tribes and territories outside British India. The chief commissionership of Delhi has a special importance of its own on account of Delhi city

*See s. 59 of the present act.

being made the capital of India. British territories in Ajmere-Merwara and Coorg are governed by the agent to the Governor-General-in Rajputana and the Resident in Mysore respectively.

VIII. Principles of Provincial administration in India.

The Governor-General in Council is responsible for the entire administration of British India and for the control exercised in varying degrees over the Native States. The Local Governments must obey the orders received from the Governor-General-in Council, and they must communicate to him their own proceedings. This subordination is derived partly from Acts of Parliament, partly from the terms of the delegation of authority by the Governor-General to Lieutenant-Governors and Chief Commissioners. Every local government including a Chief Commissioner, is the executive head of the administration within the province; and though there are minor differences in the relative status of the different local governments *inter se*, they are all alike in this: that they are all the delegates, or at least the subordinates, of the Supreme Government of India represented by the Governor-General-in-Council.

The actual work of administration is divided between the Government of India and the local Governments on the following principles. All matters of Imperial importance or matters which concern more than one province, are controlled by the Government of India exclusively, as also matters having relation to concerns outside British-India. On the other hand matters requiring local knowledge and experience for efficient administration are left to the Provincial Governments. Thus the Supreme Government retains in its own hands all matters relating to (1) foreign relations, (2) the defence of the country, (3) general taxation, (4) currency, (5) public debt, (6) tariffs, (7) post office and telegraphs, and (8) railways. On the other hand ordinary internal administration, assessment and collection.

of revenue from land, education, medical and sanitary arrangements, irrigation and public buildings, fall to the share of the Provincial Governments. But in all these matters formerly the Government of India used to exercise a general and constant control in different ways. 1) The most important method of supervising and controlling the working of every provincial administration was the financial power of the Government of India. Not only did they habitually receive, and, if necessary, modify, the annual budgets of all local governments; not only were they the common banker for every province; but every new appointment of importance, every large addition, even to minor establishments, had to receive their specific sanction, so that no new departure in administration could be undertaken without their previous approval.* (2) The Government of India had also laid down lines of general policy for carrying on the work of different departments under the control of the Provincial Governments; and it found out how far these principles had been carried out by the annual administration reports of the main departments under the local governments submitted to the Supreme Government. With the growth of the provincial autonomy, since 1919, this power must be very considerably modified. (3) In the departments for which it was itself directly responsible, the Government of India had and still has controlling officers for those departments in the different provinces. (4) In the departments which were primarily left to the local Governments, such as agriculture, irrigation, medical, education, and archeology, the Government of India employed a number of inspecting or advising officers. Those Inspectors-General frequently examined the working of the department to which they were attached in the different provinces and reported to the Government of India the result of their inspection. This method is now quite unimportant. (5) Besides all these a wide field of appeal to the Government of India was and is still given to officials and private individuals who may have any

* For changes in the financial powers of the provincial governments under the new regime, see the chapter on Indian Finance.

cause of complaint, against any particular local Government. (6) Outside the major provinces of Madras, Bombay and probably Bengal, appointments made to the most important posts under the provincial Governments were subject to the approval of the Governor-General. (7) In matters of legislation every proposed provincial legislation was subject to the preliminary scrutiny of the Government of India; and when passed by the local Government it had also to receive the assent of the Governor-General before it could become valid. (8) Specific instructions were also issued to particular local Governments in regard to matters which may have attracted the attention of the Government of India, whether from the departmental administration reports, or from the reports of the proceedings of a local Government submitted to the Imperial Government, which must now fall increasingly into disuetude.

VIII. Changes made by the Reforms of 1919.

The Act of 1919 has made the most considerable changes in the constitution of the provincial governments in India. The Joint Report on the Indian constitutional Reforms had laid down :—

“The provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India [which is compatible with the due discharge by the latter of its own responsibilities.”*

This intention was attempted to be realised by the creation, in the act of 1919, of a duality of authority in the executive government of a province. One half of this dual authority was to consist of non-responsible members, composing the Executive Council of the Province, and drawn from the

*Para 189 of the Report p. 124.

senior public servants, or the prominent Indian public men, in the Province. By law one member at least of the Executive Council in a province must be a person, who, at the time of his appointment, has been for at least twelve years in the service of the crown in India. The council is to consist of members not exceeding four in number ; and so the qualifications required for those members of the council, who have not been public servants of the crown in India, are left to be determined by rules under the consolidating Act. In practice the senior provinces of Bombay, Madras and Bengal have Executive Councils of four members apiece, two of whom are senior civilians, and two non-official Indians. In other provinces the executive council is reduced to three in Bihar and Orissa, and to two in the other Governor's provinces, one member being in every case an Indian. This half of the Provincial executive Government is appointed by the King-Emperor by warrant under the Royal sign manual, and is responsible only to the Governor as representative of the Crown. It is untouchable in any way by the provincial legislature, and is uninfluenced by the latter's censure or want of confidence in it.

The other half of the provincial government is appointed by the Governor from among the elected representatives of the people of the province. These Ministers, as they are called, are appointed to administer certain branches of government, which are known as the Transferred subjects, to distinguish them from those other branches, called Reserved Subjects, which are administered by the members of the Executive Council. A Minister must himself have been elected a representative of the people, and cannot remain Minister, if within six months after his appointment as minister he fails to find a seat in the provincial legislature. Political parties have not yet grown up in India of the type familiar to the English people ; and so the convention of the British constitution that the Ministers of the Crown shall be chosen from that party which commands a majority in the Legislature has

yet to be developed in India.* Madras alone among the provinces of India has made a beginning in this direction. The counterpart of the convention that the Ministers cannot remain in office if their policy or measures do not find favour with a majority of the legislature is, similarly, unknown yet in India. For in the first three years of the new reformed legislatures, in almost every province, government proposals of the first magnitude have been turned down ; and yet not a single Minister resigned his office on that account. The resignation by a Minister in the United Provinces before his term was not the outcome of any vote of censure by the legislature, but the result of a difference of opinion with his principal subordinate. After the initial period of training, it is hoped the full convention will be adopted by the Indian governments, at least as regards the popular or responsible half, as it is in Britain.

The Ministers together with the Executive Councillors and the Governor make up the government of a province. Despite their different origin, or source of authority, they all rank alike as members of the Government, though the salaries of the executive councillors are fixed by law untouchable by the local legislature, while those of the Ministers are such as may be voted by the local legislative council. It was naturally apprehended, from this cumbrous division in government, that the results would not be satisfactory ; that the Ministers and councillors would have a different conception of their duties as they had a different source of their authority : that there might be frequent discussions between them, with the unavoidable consequent harm to the new reforms. The authors of the idea, however, adopted all precautions they could to make this novel experiment in governance a success.

* While these pages were going through the Press, several governors in India,—notably Lord Lytton—have made an offer to the leaders of the Swaraj party in the province—who have met with very considerable successes at the last General Election—to form the Ministry; the leaders of the Swaraj party, being pledged to an obstructionist programme, have refused the overtures so far.

They divided the subjects to be administered, and made clear rules for the composition of differences in the case of conflicting interests or overlapping jurisdictions. The Act lays down distinctly that the governor is to be guided by the advice of his Ministers in the administration of the Transferred Subjects, while provision is also made to give the Governor an overriding authority in the event of his dissenting from the advice of his Ministers. Rules have likewise been made for the division and allocation of financial resources which are calculated to avoid or minimise the occasions for conflict between these two branches of the Government.

The following rather lengthy extract from the Report of the Joint Select Committee on the Act of 1919 while it was passing through Parliament may be taken to represent the most considered judgment of the authors of this experiment.

"4. In the opinion of the Committee the plan proposed by the Bill is conceived wholly in this spirit, and interprets the pronouncement of the 20th August, 1917, with scrupulous accuracy. It partitions the domain of provincial government into two fields, one of which is made over to ministers chosen from the elected members of the provincial legislature while the other remains under the administration of a Governor-in-Council. This scheme has evoked apprehensions which are not unnatural in view of its novelty. But the Committee, after the most careful consideration of all suggested alternatives, are of opinion that it is the best way of giving effect to the spirit of the declared policy of His Majesty's Government. Its critics forget that the announcement spoke of a substantial step in the direction of the gradual development of self-governing institutions with a view to the progressive realisation of responsible government, and not of the partial introduction of responsible government; and it is this distinction which justifies the method by which the Bill imposes responsibility, both on Ministers to the legislative council and on the members of the legislative council to their constituents, for the results of that part of the administration which is transferred to their charge.

5. Having weighed the evidence and information before them, the Committee have made a number of changes in the Bill. Those of a more detailed or miscellaneous character are briefly discussed below under the clauses to which they relate. Those which are directed to the avoidance of the difficulties and dangers which have been pointed out, proceed on a simple and, in the Committee's opinion, an indefeasible theory. That theory the Committee think it desirable to state at once. Ministers who enjoy the

If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his executive council—circumstances which will be indicated in the Instrument of Instructions furnished to him on his appointment by His Majesty. On the other hand in and for that field of Government in which Parliament continues to hold him responsible, the provincial Governor-in-Council will remain equipped with the sure and certain power of fulfilling that responsibility. The Committee will indicate in the course of this Report how they visualise the relations between the two parts of the provincial government, but they wish to place in the forefront of the Report their opinion that they see no reason why the relations should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common interest. He will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities, and the members of his Executive Council their administrative experience, to the joint wisdom of the government. But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purposes of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest on the two parts of the administration. Each side of the government will advise and assist the other; neither will control or impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on ministers and on the majorities of the provincial legislatures which support them; and they will be given adequate power to fulfil their charge. Similarly within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor-in-Council, and he must possess unfailing means for the discharge of his duties. Finally, behind the provincial authorities stands the Government of India."

This, as already noted, is the opinion of the most sympathetic parties connected with the latest constitutional reforms in India. But they do not seem to realise that to break up governmental functions in this manner introduces needless complications, and invites unavoidable dissensions. We do not, indeed, know anything positively yet of the experiences or position of the new popular members of the provincial governments; of how the decisions in executive policy are taken with or without their concurrence; of how often they or the Executive Councillors are overruled by the Governor, as he is empowered to do by statute in cases where the safety

or tranquillity of the province in his charge appears to him to be endangered; of how the councillors treat the Ministers, or how the latter feel their position and responsibilities as representing the popular sentiment, and having the popular support. But it may be presumed, without doing any violence to the facts of the case, that the difference in origin and outlook must inevitably assert itself in the relations between these two halves of the government, and be felt in the general administration. Again the division of subjects between the central and provincial governments does not by any means make over the most material section of governmental functions to the provinces. A substantial measure of responsible government, as promised in the declaration of August 1917, could have been more satisfactorily given by making the provinces completely autonomous, subject, if need were, to the general control of the Government of India as now provided, or subject to the overriding powers vested in the head of the provincial government in executive as well as legislative departments. With the supreme executive cabinet completely responsible to the provincial legislature, the permanent heads of departments could have easily enjoyed the dignity, security and prestige of a choice body of experts on whom the real excellence of the administration would then rest. As it is, not only the services are needlessly involved in the turmoil of politics,—which must necessarily be bitter in a period of transition; but the cumulative effect of central control, Governor's veto and overriding powers, and the division of functions between the two halves of the provincial government, makes the latter cumbrous and lacking in harmony, and altogether, defeats the intentions of the declaration of August 1917, at least as it was understood in India.

The following schedules give a division of functions as between the central and the provincial governments :—

The Division of Functions.

The following subjects are reserved to the Government of India, with the corollary that all others vest in the Provincial Governments :—

1. (a) Defence of India, and all matters connected with His Majesty's Naval, Military, and Air Forces in India, or with His Majesty's Indian Marine Service or with any other force raised in India, other than military and armed police wholly maintained by local Governments.

(b) Naval and military works cantonments.

2. External relations, including naturalisation and aliens, and pilgrimages beyond India.

3. Relations with States in India.

4. Political charges.

5. Communications to the extent described under the following heads, namely :—

(a) Railways and extra-municipal tramways, in so far as they are not classified as provincial subjects, under entry 6 (d) of Part II of this Schedule ;

(b) Aircraft and all matters connected therewith; and,

(c) Inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

6. Shipping and navigation, including shipping and navigation on inland waterways in so far as declared to be a central subject in accordance with entry 5 (c).

7. Light-houses (including their approaches) beacons, lightships, and buoys.

8. Port quarantine and marine hospitals.

9. Ports declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

10. Posts, telegraph and telephones, including wireless installations.

11. Customs, cotton excise duties, income-tax, salt, and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department and excluded Audit Departments, as defined in rules framed under section 96-D (1) of the Act.

16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

17. Commerce, including banking and insurance.

18. Trading companies and other associations.

19. Control of production supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature to be essential in the public interest.

20. Development of industries, in cases where such development by a central authority is declared by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.

22. Stores and stationery, both imported and indigenous, required for Imperial Departments.

23. Control of petroleum and explosives.

24. Geological survey.

25. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules, made or sanctioned by the Secretary of State, and regulation of mines.

26. Botanical survey.

27. Inventions and designs.

28. Copyright.

29. Emigration from, and immigration into, British India, and inter-provincial migration.

30. Criminal law, including criminal procedure.

31. Central police organisation.

32. Control of arms and ammunition.

33. Control of agencies and institutions for research (including observatories), and for professional or technical training or promotion of special studies.

34. Ecclesiastical administration, including European cemeteries.

35. Survey of India.

36. Archæology.

37. Zoological survey.

- 38. Meteorology.
- 39. Census and statistics.
- 40. All-India services.
- 41. Legislation in respect to any provincial subject in so far as such subject is in Part II of the Schedule stated to be subject to legislation by the Indian legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.
- 42. Territorial changes, other than inter-provincial, and declaration of law in connection therewith.
- 43. Regulation of ceremonial, titles, orders, precedence, and civil uniform.
- 44. Immovable property acquired by, and maintained at the cost, of the Governor-General in Council.
- 45. The Public Service Commission.

Part II.—Provincial Subjects.

1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in provinces for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards—

- (a) the powers of such authorities to borrow otherwise than from a provincial government, and
- (b) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries, and asylums, and provision for medical education.

3. Public health and sanitation and vital statistics; subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

4. Pilgrimages within British India.

5. Education: provided that—

(a) the following subjects shall be excluded, namely :—

(i) the Benares Hindu University, and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects, and

(ii) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and

(b) the following subjects shall be subject to legislation by the Indian legislature, namely :—

(i) the control of the establishment and the regulation of the constitutions and functions of Universities constituted after the commencement of these rules, and

(ii) the definition of the jurisdiction of any University outside the province in which it is situated, and

(iii) for a period of five years from the date of the commencement of these rules, the Calcutta University, and the control and organisation of secondary education in the presidency of Bengal.

6. Public works included under the following heads, namely :—

(a) construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province, and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3 (1) of that Act: provided that the Governor-General in Council may, by notification in the *Gazette of India*, remove any such monument from the operation of the exception;

(b) roads, bridges, ferries, tunnels, ropeways, and causeways, and other means of communication, subject to such conditions, as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe;

(c) tramways within municipal areas; and

(d) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by pro-

vincial legislation ; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

7. Water-supplies, irrigation and canals, drainage and embankments, water storage and water power ; subject to legislation by the Indian legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

8. Land revenue administration, as described under the following heads, namely :—

- (a) assessment and collection of land revenue ;
- (b) maintenance of land records, survey for revenue purposes, records-of-rights ;
- (c) laws regarding land tenures, relations of landlords and tenants, collection of rents ;
- (d) Courts of Wards, incumbered and attached estates ;
- (e) land improvement and agricultural loans ;
- (f) colonisation and disposal of Crown lands and alienation of land revenue : and
- (g) management of Government estates.

9. Famine relief.

10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests, and prevention of plant diseases, subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases, to such extent as may be declared by any Act of the Indian legislature.

11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.

12. Fisheries.

13. Co-operative Societies.

14. Forests, including preservation of game therein ; subject to legislation by the Indian legislature as regards disforestation of reserved forests.

15. Land acquisition ; subject to legislation by the Indian legislature.

16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs,

and the levying of excise duties and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

17. Administration of justice, including constitution, powers, maintenance and organisation of courts of civil and criminal jurisdiction within the province; subject to legislation by the Indian legislature as regards High Courts, Chief Courts and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators-General and Official Trustees; subject to legislation by the Indian legislature.

20. Non-judicial stamps, subject to legislation by the Indian legislature, and judicial stamps, subject to legislation by the Indian legislature as regards amount of court-fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

21. Registration of deeds and documents: subject to legislation by the Indian legislature.

22. Registration of births, deaths, and marriages; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.

23. Religious and charitable endowments.

24. Development of mineral resources which are Government property; subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely:—

(a) factories;

(b) settlement of labour disputes;

(c) electricity;

(d) boilers;

(e) gas;

(f) smoke nuisances; and

(g) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing:

subject as to heads (a), (b), (c), (d) and (g) to legislation by the Indian legislature.

27. Stores and stationery; subject in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.

28. Adulteration of foodstuff and other articles; subject to legislation by the Indian legislature as regards import and export trade.

29. Weights and measures; subject to legislation by the Indian legislature as regards standards.

30. Ports, except such ports as may be declared by rule made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far as not declared by the Governor-General in Council to be central subjects; but subject as regards inland steam vessels to legislation by the Indian legislature.

32. Police, including railway police; subject in the case of railway police to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely :—

- (a) regulation of betting and gambling;
- (b) prevention of cruelty to animals;
- (c) protection of wild birds and animals;
- (d) control of poisons; subject to legislation by the Indian legislature;
- (e) control of motor vehicles: subject to legislation by the Indian legislature as regards licenses valid throughout British India; and
- (f) control of dramatic performances and cinematographs; subject to legislation by the Indian legislature in regard to sanction of films for exhibition.

34. Control of newspapers, books and printing presses; subject to legislation by the Indian legislature.

35. Coroners.

36. Excluded areas.

37. Criminal tribes; subject to legislation by the Indian legislature.

38. European vagrancy; subject to legislation by the Indian legislature.

39. Prisons, prisoners (except State prisoners), and reformatories; subject to legislation by the Indian legislature.

40. Pounds and prevention of cattle trespass.

41. Treasure trove.

42. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.

43. Provincial Government Presses.

44. Elections for Indian and provincial legislatures ; subject to rules framed under sections 64 (1) and 72-A (4) of the Act.

45. Regulation of medical and other professional qualifications and standards ; subject to legislation by the Indian legislature.

46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. Control, as defined by rule 10, of members of all-India and provincial services serving within the province ; and control, subject to legislation by the Indian legislature, of public services within the province other than all-India services.

48. Sources of provincial revenue, not included under previous heads, whether :—

- (a) taxes included in the Schedules to the Scheduled Taxes Rules ; or
- (b) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

49. Borrowing of money on the sole credit of the province ; subject to the provisions of the Local Government (Borrowing) Rules.

50. Imposition by legislation of punishments by fine, penalty or imprisonment for enforcing any law of the province relating to any provincial subject ; subject to legislation by the Indian legislature in the case of any subject, in respect of which such a limitation is imposed under these rules.

51. Any matter which, though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

52. Matters pertaining to a central subject in respect of which powers have been conferred by or under any law upon a local Government.

And, among the provincial branches of administration, the next table shows the subjects Transferred to the Ministers.

List of Provincial Subjects Transferred.

1. Local self-government—that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district

boards, mining boards of health, and other authorities established in the provinces for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards (a) the powers of such authorities to borrow otherwise than from a provincial Government, and (b) the levying by such authorities of taxation not included in Schedule I (a) to the Schedule Taxes Rules.—All Governors' provinces.

2. Medical administration, including hospitals, dispensaries and asylums, and for medical education.—All Governors' provinces.

3. Public health and sanitation and statistics; subject to legislation by the Indian legislature in respect to infection and contagious diseases to such extent as may be declared by any Act of the Indian legislature.—All Governors' provinces.

4. Pilgrimages within British India.—All Governors' provinces.

5. Education, other than European and Anglo-Indian education, provided that—

(a) The following subjects shall be excluded, namely :—

(i) The Benares Hindu University and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects, and

(ii) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and—(II. European and Anglo-Indian education is transferred in Burma).

(b) The following subjects shall be subject to legislation by the Indian legislature, namely :—

(i) The control of the establishment and the regulation of the constitutions and functions of University constituted after the commencement of these rules, and

(ii) The definition of the jurisdiction of any University outside the province in which it is situated. and

(iii) For a period of five years from the date of the commencement of these rules, the Calcutta University and the control and organisation of secondary education in the Presidency of Bengal.—All Governors' provinces.

6. Public Works included under the following heads, namely:—

- (a) construction and maintenance of provincial buildings, other than residences of Governors of provinces, used or intended for any purpose in connection with the administration of the province on behalf of the departments concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings; and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the Ancient Monuments Preservation Act, which are for the time being declared to be protected monuments under section 3 (1) of that Act; provided that the Governor-General in Council may, by notification, in the *Gazette of India*, remove any such monument from the operation of this exception;
- (b) Roads, bridges, ferries, tunnels, ropeways, and causeways, and other means of communication, subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe.
- (c) Tramways within municipal areas; and
- (d) Light and feeder railway and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.—All Governors' provinces except Assam.

7. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases; subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature.—All Governors' provinces.

8. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.—All Governors' provinces.

9. Fisheries.—All Governors' provinces; except Assam.

10. Co-operative Societies.—All Governors' provinces.
11. Forests, including preservation of game therein ;subject to legislation by the Indian legislature as regards disforestation of reserved forests.
12. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs and the levying of excise duties and license fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture, and sale for export.—All Governors' provinces, except Assam.
13. Registration of deeds and documents; subject to legislation by the Indian legislature.—All Governors' provinces.
14. Registration of births, deaths, and marriages; subject to legislation, by the Indian legislature for such classes as the Indian legislature may determine.—All Governors' provinces.
15. Religious and charitable endowments.—All Governors' provinces.
16. Development of industries, including industrial research and technical education.—All Governors' provinces.
17. Stores and stationery required for transferred departments; subject in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.—All Governors' provinces.
18. Adulteration of food-stuffs and other articles; subject to legislation by the Indian legislature as regards import and export trade.
19. Weights and measures; subject to legislation by the Indian legislature as regards standards.—All Governors' provinces.
20. Libraries (other than the Imperial Library), Museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.—All Governors' provinces.

IX. Royal Instructions to the Supreme Heads of Government in India.

The following instructions to the provincial governors in India, not only bring the latter on a par with the governor of a self-governing colony, but also manifest a praiseworthy solicitude on the part of the King-Emperor for the minorities and special interests.

Instructions to the Governor of a Province.

Prior to the inauguration of the Reforms the following Instructions were issued to Governors under the Royal Sign Manual:—

Instructions to the Governor or acting Governor for the time being of the Presidency or Province of——Whereas by the Government of India Act provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realisation of Responsible Government in that country as an integral part of our Empire, and whereas it is our will and pleasure that in the execution of the office of the Governor in and over the Presidency or the Province of——you shall further the purposes of the said Act to the end that the institutions and methods of Government therein provided shall be laid upon the best and surest foundations, that the people of the said Presidency or Province shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that our authority and the authority of the Governor-General-in-Council shall be duly maintained. Now, therefore, we do hereby direct and enjoin you and declare our will and pleasure to be as follows:—

1. You shall do all that lies in your power to maintain those standards of good administration, to encourage religious toleration, co-operation and good will among all classes and creeds, to ensure the probity of public finance and the solvency of the Presidency or Province, and to promote all measures making for the moral, social, and industrial welfare of the people without distinction to take their due share in the public life and government of the country.

2. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege, of enfranchisement, that is to say,

that those who exercise the power, henceforward entrusted to them, of returning representatives to the Legislative Council being enabled to perceive the effects of their choice of a representative, and that those who are returned to the Council, being enabled to perceive the effects of their votes given therein, shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

3. **Duty of the Ministers :** Inasmuch as certain matters have been reserved for the administration, according to law, of the Governor in Council, in respect of which the authority of our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the Presidency or Province that so far as may be possible, the responsibility for each of these respective classes of matters may be kept clear and distinct.

4. Nevertheless, you shall encourage the habit of joint deliberation between yourself, your councillors and your ministers in order that the experience of your official advisers may be at the disposal of your ministers, and that the knowledge of your ministers as to the wishes of the people may be at the disposal of your councillors.

5. You should assist ministers by all the means in your power in the administration of the transferred subjects and advise them in regard to their relations with the Legislative Council.

6. In considering a minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Presidency or Province, as expressed by their representatives therein.

Special Charges:—But in addition to the general responsibilities with which you are, whether by statute or under this instrument, charged, we do further hereby specially charge you:—

(1) To see that whatsoever measures in your opinion are necessary for maintaining safety and tranquillity in all parts of your Presidency or Province, and for preventing occasions of religious or racial conflict are duly taken, and that all orders issued by our Secretary of State or by our Governor-General-in-Council on our behalf, to whatever matters relating, are duly complied with.

(2) To take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who whether on account of the smallness of their number or their lack of educational or material advantages, or from any other cause, specially rely upon our protection, and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer or have cause to fear neglect or oppression.

(3) To see that no order of your Government and no act of your Legislative Council shall be so framed that any one of the diverse interests of, or arising from, race, religion, education, social condition, wealth or any other circumstance may receive unfair advantage or may unfairly be deprived of privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large.

(4) To safeguard all members of our services employed in the said Presidency or Province in the legitimate exercise of their functions and in the enjoyment of all recognised rights and privileges, and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution.

(5) To take care that while the people inhabiting the said Presidency or Province shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege which is against the common interests shall be established; and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

X. Sketch of a Provincial Administration.

The old distinction of Regulation and non-Regulation Provinces is now practically abolished. The provincial administration of to-day is, in the branches of government assigned to it, and subject to the general supervision of the central Government or the Secretary of State, fairly autonomous. The actual work of Government is divided up between the Executive Council and the Ministry both working together under the general control of the Governor, who is an imperial officer not responsible to the local legislature, and who has powers to override either or both parts of his government, and also his legislative council. The latter body is instituted in every important province with a fairly wide field of legislative activity as well as financial authority. The Secretariats of the Provincial Governments are divided into departments, each under a Secretary with subordinate officers as in the case of the Supreme Government. Thus in Bombay the secretariat is divided into five main departments: 1. Revenue and Financial; 2. Political, Judicial and Special; 3. General, Marine and Ecclesiastical; 4. Ordinary Public Works; 5. Irrigation. The senior of the three Civilian Secretaries is called the Chief Secretary. In addition to the secretariat there are special departments such as Inspectors-General of Police, Jails and Registration; Director of Public Instruction; the Inspector-General of Civil Hospitals; the Sanitary Commissioner; and the Superin-

the Chief Engineers for Public Works who are likewise Secretaries to the Governments in the Public Works Department. Each of the principal departments of the civil service is under the charge of an officer who is attached to and advises the local Government. He himself is brought in touch with local works by making frequent tours of inspection. Except in Bombay, the Revenue Department is administered under the Governor by a Board of Revenue, consisting of two or three members who are the highest officers in the administrative branch of the service. The work of this board may be divided into the department of Land Revenue and the departments of Excise, Opium, Income Tax, etc. The members of the Board may act separately or collectively according to the practice prevailing in each province. In Madras, the Board consists of four members, two of whom are Land Revenue Commissioners, and a Settlement Commissioner and one a Commissioner for Salt, Excise, Income Tax and Customs. The similar departments are controlled in Bombay by the Director of Land Records and Agriculture, and the Commissioners of Stamps, Excise, and Opium. These officers are immediately subordinate to a local Government. Besides these officers each Government has its own law officer, called the Advocate-General, to advise it on legal questions, and to conduct important cases in which the Government is interested.

In all provinces the actual system of administration is based on the repeated division of territories. Each unit of administration is in the responsible charge of an officer who is subordinate to the officer next in rank above him. The most important of this administrative units is the District, and the most accurate impression of the system of Indian administration is gained by regarding a Province as consisting of a collection of districts, which may themselves be split up into sub-districts and smaller areas still. There are 250 districts in British India, each of an average size of 4432 square miles, and the average population of close upon a million. Several districts

the Presidency of Bombay namely Sind, the Northern Division, the Central Division and the Southern Division. Each Division is in the charge of a Divisional Commissioner. In Madras, there are no such Divisions, the Districts being immediately under the Provincial Government there.

XI. District Administration.

"The District Officer," says Sir William Hunter in the Indian Empire, "whether known as the Collector-Magistrate or Deputy Commissioner, is the responsible head of his jurisdiction. Upon his energy and personal character depends ultimately the efficiency of our Indian Government. His own special duties are so numerous and various as to bewilder the outsider; and the work of his subordinates, European and Native, largely depends upon the stimulus of his personal example. The Indian Collector is a strongly individualised worker in every department of rural wellbeing, with a large measure of local independence and of individual initiative. As the name of the Collector-Magistrate implies, his main functions are two-fold. He is a fiscal officer charged with the collection of the revenue from land and other sources; he is also a Revenue, and Criminal Judge, both in the first instance and in appeal. But his title by no means exhausts his multifarious duties. He does in his smaller sphere all that the Home Secretary superintends in England, and a great deal more, for he is the representative of a paternal, and not of a constitutional, Government. Police, jails, education, municipalities, roads, sanitation, dispensaries, the local taxation and the Imperial

revenues of his district are to him matters of daily concern. He is expected to make himself acquainted with every phase of the social life of the natives and with each natural aspect of the country. He should be a lawyer, an accountant, a financier and a ready writer of state-papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering."

This sketch of his duties is substantially true, though the independent initiative which the District Officer formerly enjoyed has been of late considerably restricted. Even to-day a Collector is the principal officer in his district. He is the local representative of the Government. His duties as Collector differ in different provinces according to the system on which the Land Revenue is assessed. Though he is not the only officer in the district, he is the supreme officer; and nothing can pass in the district of which it is not his duty to keep himself informed and to watch the operation. He must watch the vicissitudes of trade, the state of the weather, the administration of civil justice. He must avoid undue interference in matters which are not primarily within his control, but must offer his remonstrance against anything which he believes to be wrong in the interests of the people. He is also a Magistrate of the First Class, though in practice he does not try in person many criminal cases. But he supervises the work of all other magistrates in his district. He is responsible for the peace of the district and suppression of crime.

The District Officer is assisted by a staff of officers both English and Indian. The most important officer under his command is the assistant Magistrate, who is also called the senior Assistant-Collector. He must be a man of some length of service and experience; the extent of his authority mainly depends on the amount of confidence reposed in him by the District Officer. The District Superintendent of Police is another officer on the staff of the District Officer to whom he

is responsible for the internal peace and order of the district, for the detection and suppression of crimes, and for the prosecution of criminals. For the internal management of the Police affairs, he is however, responsible only to his immediate superior at the headquarters.

In consequence of the formation of special departments, such as those of public works, sanitation and education, the functions of the District Officers are now-a-days less important than before. But even in these special departments the active co-operation and the advice of the District Officer are always needed. So also in the new self-governing institutions, such as the municipalities within his districts, which are all guided and controlled in their working by the District Officer. He used to be also generally the chairman of the District Board which, with the aid of subsidiary Boards, maintains roads, schools and dispensaries and carries out sanitary improvements in rural areas.

In fine the District Officer rules and guides the people, informs the Government of every thing that takes place in his district, suggests improvements, and protests against innovations which he considers detrimental to the interests of the people within his jurisdiction, and maintains peace and order and good feeling among the various races in his charge.

The District is divided into a number of small units each in the charge of a responsible officer. In general the districts are split up into sub-divisions under the charge of officers of the Imperial Civil Service, or the members of the provincial service; and these sub-divisions are in their turn further divided into minor charges each under officers of the subordinate service. Each sub-divisional officer usually resides at the headquarters of his jurisdiction and has a court house, office, sub-treasury, and sub-jail at his headquarters. In Bombay and in the United Provinces the sub-divisional officers generally live at the head office of the district when not on tour. In these two provinces, as well as in Madras, sub-district units

are styled *Talukas* or *Tahsils*, and are administered by *Tahasil-dars*, or *Mamlatdars* as they are called in Bombay. These officers belong to the subordinate service. The area of an ordinary Tahsil is from 400 to 600 square miles. The Tahsil-dar is assisted by his subordinate officers, styled revenue inspectors, or *Kanungos* and the village officers. The latter are mostly hereditary. The most important of them are : the *Patel* or the headman, who collects the revenue, and, in Madras, also acts as a petty Magistrate and Civil Judge; the *Kulkarni* or *Patvari* who keeps the village accounts, register of holdings, and in general all records connected with the land revenue; and the *Chokidar* or village watchman who is the rural policeman. The Indian village organization is very ancient and endures even now, though with modifications required by the peculiar character of the present system of government.

For Judicial purposes, there are High Courts of justice in Bengal, Madras, Bombay, Bihar and Orissa, the United Provinces and the Punjab. Burma has a Chief Court, while Assam and the Central Provinces have courts of Judicial Commissioner.

XII. Relations between the Government of India and the Heads of Provinces.

It would be as interesting to know as it is difficult to say, what exactly are the relations between the supreme Government and its various subordinate chiefs. On paper, of course, everything seems to be so well ordered as to leave hardly any room for friction. But in reality there is not always found that smooth and noiseless working of the wheels of government as an uninitiated outsider would be inclined to believe in. We know for a fact that Sir Bartle Frere, as the Governor of Bombay, in the days when Sir John Lawrence was the Viceroy of India,

caused more than one sleepless night to the Viceroy on the question of the failure of the Bank of Bombay as well as on questions of Frontier policy. It is also recorded that the Duke of Buckingham, as Governor of Madras under Lord Lytton, caused a serious obstruction to that Viceroy's famine policy; so much so that the Home Government had to interfere, and to recall, almost peremptorily, the refractory Duke. Perhaps it was to such cases as these that Lord Curzon alluded in one of his farewell speeches: "In old volumes of our proceedings which it has been my duty to study at midnight hours, I have sometimes come across peppery letters or indignant remonstrances, and have seen the spectacle of infuriated proconsuls strutting up and down the stage." For himself, he added, notwithstanding the fact that during his seven years' tenure of the Viceroyalty nearly thirty Governors, Lieutenant-Governors and Chief Commissioners had come and gone, there never had been a time when the relations between the Supreme Government and the heads of the local Governments had been so free from friction or so harmonious. No one except those intimately connected with the Government of India can say how often such friction arises even to-day. It would seem, however, that the prevalence of the more liberal views as regards the extent of the authority of local Governments, the great expansion of their Legislative Councils and the greater harmony between the rulers and the ruled resulting therefrom, the large concessions in matters of finance, the definite demarcation of the other spheres of public activity, the growth of precedent, the improved means of rapid communications, and above all the characters of the men chosen for such posts have all combined to minimise, if not entirely to destroy all causes of friction. The right to be obeyed is so firmly established in the Government of India, that the privilege of subordinate proconsuls to tender their resignation by way of a protest against the undue encroachments or interference of the supreme authority has ceased to be a censure upon the Viceregal powers, and is rather a means of affording a speedy solution of an unpleasant problem. The resignation of Sir Bamfylde

Fuller afforded the last instance of this nature, vindicating the right of the Supreme Government to be obeyed, as well as the right of its lieutenant to be relieved of an untenable situation. With the devolution of authority to the new elements of popular responsibility in the provinces, occasions of friction between the central and provincial authorities must further diminish, though it is even now conceivable that in problems of first-class importance, like the arrest and trial of a Gandhi, there may be difference of opinion between the supreme and the local government.

XIII. The Structure of Indian Government.

The question of provincial autonomy, which has been exercising the minds of the public for some time past, and which is discussed more in detail hereafter, will best be solved by trying to understand whether our present constitution is unitary or federal in form. In a Unitary Government, like that of England or France, all sovereign power is concentrated in the hands of the Central Government. There may, indeed, be a division of functions between the central and local governing bodies. But the division in no case amounts to a distribution of sovereign powers. The local governing bodies are the creatures, the delegates and the dependents of the central power, which is the sole, supreme, sovereign authority in the state; and between which and the local bodies no other sovereign or semi-sovereign authority is interposed. On the other hand the chief characteristic of a Federal Government is the distribution of sovereignty between the Federal power and its constituent states. A federation is a combination of several independent states into one single state. The combining states may have desired, or been compelled, to unite in order to promote their economic development, or to secure their political integrity or safety. But even when combined they do not lose all trace of

their original independence. Hence the new central state, made by the union of the old independent states, is entrusted only with such sovereign powers as the combining states might decide to vest in a central authority. Consequently even in cases where the necessity of unification is enforced by the considerations of self-preservation, the central authority, though allowed a liberal share of sovereign powers, is never quite the undisputed sovereign which the similar authority in a unitary state is. There is always a difference between powers allotted to the central authority and those reserved for individual states.

The Government of India resembles, as well as differs from, both these kinds of states. The dominant position of the Supreme Government in India, and its unquestioned powers of control, and even of creation, suggest a great affinity to a unitary state. But the presence of Provincial Governments,—which are an intermediary between the Supreme Government and the local governing bodies, and which are essentially deputies of the Supreme Government—serves to distinguish the Government of India from a unitary state. Nor can we quite describe it as a federal state. The mere presence of a number of provinces, each with its own separate Government, is not enough to constitute a federation. With the exception of the three Presidencies, all the other provinces in India have been created by the central authority in order to relieve the latter of some portion of its heavy administrative work. In stead, therefore, of the provinces combining to create a united central Government, as is the case in federations, it was rather the central Government which deputed its minor functions of government in order to strengthen its main hold. Even the originally independent Presidencies were forced to submit to the central authority. Besides, the supremacy of the central Government once established, it is unquestioned in every province. In so far as the Government of India can themselves be called a sovereign power, there is really no distribution of sovereignty between them and the various provincial Governments.

It must, however, be remembered that the Government of India themselves are not sovereign in the sense that the King in Parliament is the sovereign of the whole British Empire. They are, in fact, more under the control of the Secretary of State for India, than the self-governing colonies are under the control of the Secretary of State for the colonies. Such decentralisation, therefore, as already exists in this country, notably in financial matters, is hardly large enough to amount to a distribution of sovereignty, and yet not insignificant enough to be described as a mere delegation of powers which can be resumed by the Central Government whenever the latter choose to do so.

The case of the Government of India, therefore, must be classed by itself. There is no doubt a division of work between the Supreme and the Provincial Governments; but the division is brought about for the sake of administrative convenience, and not out of any deliberate desire to create independent, semi-sovereign authorities. The view, however, is gaining ground that even if in the past, there was no such deliberate intention to establish semi-sovereign states in the provinces, it is high time that they were so regarded now—a view which will be examined hereafter. This tendency, more than any actual organization of Government, "precludes us from regarding ours as a unitary state.

XIV. Provincial Autonomy.

The question of giving wider powers to the provinces is at least as old as the Government by the Crown directly. In his speeches on India about the time that the government of the country was transferred to the Crown, Mr. Bright repeatedly insisted upon the necessity of a greater decentralisation. Commenting on those speeches, Sir John Strachey remarks that the suggestion of Bright for a separate, independent government for each of the Presidencies of India, subject only to the British

Crown, and for the abolition of the Central Government, is impracticable. "There is clearly nothing more essential to the maintenance of our empire in India," says he "than a strong central authority: but Mr. Bright's belief was undoubtedly true that there could be no successful government in India, unless the fundamental fact of the immense diversity of the Indian peoples and countries be recognised, and each great province be administered with a minimum of interference from outside."

On the other hand Lord Curzon believed:

"In a strong Government of India gathering into its own hands and controlling all the reins. But I would ride local Governments on the shaffle and not in the curb: and I would do all in our power to consult their feelings, to enhance their dignity, and to stimulate their sense of responsibility and power."

The views of the Government of India underwent an almost radical change six years later. The famous Delhi despatch of Lord Hardinge's Government says:

It is certain that, in the course of time, the just demands of Indians for a larger share in the Government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the Supreme authority of the Governor General-in-Council. The only possible solution of the difficulty would appear to be gradually to give the provinces a large measure of self Government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing powers to interfere in cases of mis-government, but ordinarily restricting themselves to matters of Imperial concern. In order that this consumma-

tion may be attained, it is essential that the Supreme Government should not be associated with any particular provincial Government. "

These show how easy it is, even for trained and experienced public men, to take different views of such a complex problem, and how difficult it is to offer a simple and satisfactory solution by men relatively inexperienced and ignorant of the actual difficulties of the problem. As early as 1833 an attempt was made to confine the interference of the Supreme Government in a local concern to the requirements of a just control, indispensable to the maintenance of the Imperial unity and avoid all "petty, vexations and meddling interference." But in practice it is very difficult to determine exactly where the just control of general principles ends, and the petty, vexatious, meddling interference in details begins. It may quite conceivably happen that what is normally a detail, which had best be left to the local Government, might in exceptional circumstances, assume the dignity of a great principle. Take for instance the Cawnpore Mosque case, where the Viceroy interfered in apparently only a local riot ; or the still later case of the United Provinces Municipalities Act, where the interference of the Supreme Government was invoked by the people, though strictly speaking, it was only a matter of detail. Under such circumstances the Government of India, and even the Secretary of State, must assert themselves. It is, therefore, not quite a thing to be wished for that the relations, between the Supreme Government and its local subordinates should acquire the rigidity of a federal constitution ; rather should they be capable of being readily adaptable to new or changing conditions.

The ideal of provincial autonomy, however, has been too definitely accepted by the leaders of the Indian opinion to allow a criticism of that ideal without a charge of want of sympathy with the noble ideal of self-government. And yet it must be said that the history of the last century or so all over the world shows

the struggle of imperialism—if one may so describe the centralising tendencies—against provincialism, resulting in the indisputable victory of the former. Prussia helps to form the German Empire, and Sardinia Italy. The provinces of Canada unite to form a Dominion and the States of Australia—admittedly the most democratic of the self-governing colonies of England—voluntarily combine to form the Commonwealth. Even in the United States the power and prestige of the central Government have grown immensely at the expense of local independence. And territorial acquisitions, or political influence, beyond the frontiers of the United States are not rigidly excluded. Hence a centralised government is not necessarily hostile to the development of democracy, or to its maintenance. It is doubtful, moreover, if a complete provincial autonomy in India would be quite to the advantage of the people. No doubt provincial autonomy would secure better representation of the people in the councils of the Government, and facilitate the advent of responsible government on the model of the Governments in England or the colonies. But if this increased representation in the Provincial Councils and greater responsibility are obtained without any change in the powers of Supreme Government, the self-government so obtained would be illusory. True self-government for India can only be realised when the Supreme Government becomes perfectly amenable to public opinion in India. If that is accomplished provincial autonomy would have very little value beyond sentiment; and if that remains unachieved provincial autonomy would be only one more agency to raise hopes which might never be realised. The necessity of a real self-government as thus defined is emphasised by the economic conditions of India. If our industrial development is to be pushed on rapidly, if our citizens in other parts of the British Empire are to be considered and treated much better than slaves, we need a Central Government which is national in its composition as well as in its tone; and which can protect and promote the interests of its citizens both

at home and abroad more than any Provincial Government possibly can do.

If we stretch our imagination and look a little in the future the problem of decentralisation, -of Provincial Autonomy, -would be seen to wear an entirely different aspect. The people of India disunited by centuries of misunderstandings have at last been united, or are beginning to be united in a single nationality. If they would be left to themselves they would soon forget that they are Hindus or Mahomedans in trying to learn that they are Indians, and that they have to accomplish the Herculean task of restoring India to the position that she once occupied as the centre of the civilised world. This task can never be accomplished by another people than the Indians themselves, however sincere and sympathetic that other people might be. To achieve this, self-government would be indispensable. But it does not need, it would, indeed, gravely be prejudiced by any separation in different provinces. The most serious problem before a united self-governing India in the near future would be, not how to give the greatest play to local sentiment, but how to wrest the economic supremacy from Japan or Germany. To solve that we shall need the undivided strength of every one who thinks of India before thinking of Bengal or Gujerat; we shall have to organise and co-ordinate resources of the entire peninsula with a view to bring them to bear on one single issue. If therefore, the ideal of provincial autonomy means the weakening of the central government, we may confidently say that a self-governing India, ten years after the realisation of self-government, will have no need for it, whatever be the vogue for it to-day.

Since 1917, however, a new ideal of Indian political development seems to have been definitely accepted and codified. **"Our Conception of the eventual future of India is a sisterhood of States"** says the Reforms Report, para 349. We have already noticed in a previous chapter that the Government of India has in the past been a central military

government, which had, however, admitted a certain degree of decentralisation. But the devolution was the result not of any concession to strong local sentiment but purely for administrative convenience. It was true this convenience had crystallised into such a hard fact that the resumption of complete authority by the central government was next to impossible, it is also true that the reviving political consciousness of the people of India made them see in the expansion of the powers delegated to the provincial governments the surest means of securing their own increasing association in the task of government. The government, therefore, fell in with a growing current of Indian public opinion when it announced as its settled policy the increasing association of the people of India, and directed attention to the possibilities of provincial autonomy as the only means to accomplish that end.

But because for once government convenience has coincided with popular ambitions, it does not necessarily follow that the ideal is either feasible, or acceptable. The provinces and states of India are units without any unity. They are the creations of political expediency, without a link that could serve for permanent cohesion. The provinces might foster a sense of local patriotism, and the states a feeling of personal loyalty, which will, if tolerated at all, result in the most disastrous seeds of internal rivalries and jealousies, ending, as sure as fate, in the rapid undermining of national solidarity. The Reforms para from which we have quoted above goes on to observe:—

“Over this congeries of states would preside a central government, increasingly representative of and responsible to the people of all of them; dealing with matters both internal and external of common interest to the whole of India; acting as arbiter of interstate relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire.”

This picture is necessarily over-coloured. The Central Government will appear in the light of either a meddling

interferer, or else a parasite which it will be no one's interest to support. It will be, maintained into power by alien authority, under pretext of extra Indian responsibility. It aims at representing all India on equal terms with the self-governing members of the British Empire; but will, if allowed to weaken by the growth of provincial autonomy and local patriotism, end by becoming the instrument of foreign tyranny. The present financial arrangements make it appear in the light of a provincial pensioner, busy with all the wasteful and extravagant departments of public activity. Even assuming these arrangements to be temporary, the bad odour created by such an arrangement cannot altogether be destroyed.

The public opinion of India, led by men who desired to progress on the lines of least resistance has been betrayed into a gigantic political error. The true self-government in India can never be established so long as the central authority remains irresponsible. The reservation of powers provided for in the Act of 1919 is sufficient proof of this remark. India has ever aimed at being one, no matter the accidents of our history. For the Indian people, at a stage in their political development, deliberately to abandon or weaken the principle of national solidarity and Indian unity is, to say the least, politically suicidal. And hence we cannot accept the goal indicated in the above quotation, as much because, it would render this country an easy prey for designing outsiders, as because it would increase and intensify internal jealousies, and prevent the consummation of our political ambitions, the establishment of a strong, national, democratic government in India.

CHAPTER V.

The Indian Legislature.

63. Subject to the provisions of this Act, the Indian legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except, as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

63 A. (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under this Act, of whom not more than twenty shall be official members.

(2) The Governor-General shall have power to appoint, from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

63 B. (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under this Act.

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred:

Provided that rules made under this Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

63 C. (1) There shall be a president of the Legislative Assembly, who shall, until the expiration of four years from the first meeting thereof, be a person appointed by the Governor-General, and shall thereafter be a member of the Assembly elected by the Assembly and approved by the Governor-General:

Provided that, if at the expiration of such period of four years the Assembly is in session, the president then in office shall continue in office until the end of the current session, and the first election of a president shall take place at the commencement of the ensuing session.

(2) There shall be a deputy-president of the Legislative Assembly, who shall preside at meetings of the Assembly in the absence of the president, and who shall be a member of the Assembly elected by the Assembly and approved by the Governor-General.

(3) The appointed president shall hold office until the date of the election of a president under this section, but he may resign his office by writing under his hand addressed to the Governor-General, or may be removed from office by order of the Governor-General, and any vacancy occurring before the expiration of his term of office shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office if they cease to be members of the Assembly. They may resign office by writing under their hands addressed to the Governor-General, and may be removed from office by a vote of the Assembly with the concurrence of the Governor-General.

(5) A president and deputy-president shall receive such salaries as may be determined, in the case of an appointed president by the Governor-General, and in the case of an elected president and a deputy-president by Act of the Indian legislature.

63 D. (1) Every Council of State shall continue for five years, and every Legislative Assembly for three years from its first meeting:

Provided that—

- (a) either chamber of the legislature may be sooner dissolved by the Governor-General; and
- (b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and
- (c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months, or with the sanction of the Secretary of State not more than nine months, after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

63 E. (1) An official shall not be qualified for election as a member of either chamber of the Indian legislature, and if any non-official member of either chamber accepts office in the service of the Crown of India, his seat in that chamber shall become vacant.

(2) If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in such first-mentioned chamber shall thereupon become vacant.

(3) If any person is elected a member of both chambers of the Indian legislature, he shall, before he takes his seat in either chamber, signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant.

(4) Every member of the Governor-General's Executive Council shall be nominated as a member of one chamber of the Indian legislature, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers.

64. (1) Subject to the provisions of this Act, provision may be made by rules under this Act as to —

- (a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and
- (b) the conditions under which and manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and
- (c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative

Assembly (including the number of members to be elected by communal and other electorates and any matters incidental or ancillary thereto; and

- (d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and
- (e) the final decision of doubts or disputes as to the validity of an election; and
- (f) the manner in which the rules are to be carried into effect.
- (2) Subject to any such rules, any person who is a ruler or subject of any state in India may be nominated as a member of the Council of State or the Legislative Assembly.

65. (1) The Indian legislature has power to make laws—

- (a) for all persons, for all courts, and for all places and things, within British India; and
- (b) for all subjects of His Majesty and servants of the Crown within other parts of India; and
 - (c) for all native Indian subjects of His Majesty, without and beyond as well as within British India; and
- (d) for the government officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act; and
- (e) for all persons employed or serving in or belonging to the Royal Indian Marine Service; and
- (f) for repealing or altering any laws which for the time being are in and part of British India or apply to persons for whom the Indian legislature has power to make laws.

(2) Provided that the Indian legislature has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting

- (i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any Act amending the same) or
- (ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India;

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

(3) The Indian legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any high court.

66. (1) A law made under this Act for the Royal Indian Marine Service shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits.

(2) The punishments imposed by any such law for offences shall be similar in character to, and not in excess of, the punishments which may, at the time of making the law, be imposed for similar offences under the Acts relating to His Majesty's Navy, except that, in the case of persons other than Europeans or Americans, imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude.

67. (1) Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

(2) It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of either chamber of the Indian legislature any measure affecting—

- (a) the public debt or public revenues of India or imposing any charge on the revenues of India; or
- (b) the religion or religious rites and usages of any class of British subjects in India; or
- (c) the discipline or maintenance of any part of His Majesty's military, naval, or air forces; or

- (d) the relations of the Government with foreign princes or states : or any measure—
- (i) regulating any provincial subject, which has not been declared by rules under this Act to be subject to legislation by the Indian legislature ; or
- (ii) repealing or amending any Act of a local legislature ; or
- (iii) repealing or amending any Act or ordinance made by the Governor-General.

2a) Where in either chamber of the Indian legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment, and effect shall be given to such direction.

(3) If any Bill which has been passed by one chamber is not, within six months after the passage of the Bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both chambers : Provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers.

(4) Without prejudice to the powers of the Governor-General under section sixty-eight of this Act, the Governor-General may, where a Bill has been passed by both chambers of the Indian legislature, return the Bill for reconsideration by either chamber.

(5) Rules made for the purpose of this section may contain such general and supplemental provisions as appear necessary for the purpose of giving full effect to this section.

(6) Standing orders may be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the Governor-General in Council, but may with the consent of the Governor-General be altered by the chamber to which they relate.

Any standing order made as aforesaid which is repugnant to the provisions of any rules made under this Act shall, to the extent of that repugnancy but not otherwise, be void.

(7) Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

67A. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

- (i) interest and sinking fund charges on loans ; and
- (ii) expenditure of which the amount is prescribed by or under any law ; and
- (iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and
- (iv) salaries of chief commissioners and judicial commissioners ; and
- (v) expenditure classified by the order of the Governor-General in Council as—
 - (a) ecclesiastical ;
 - (b) political ;
 - (c) defence.

(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof

67 B. (1) Where either chamber of the Indian legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity, or interests of British India or any part thereof, and thereupon—

(a) If the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian legislature, or (as the case may be) in the form recommended by the Governor-General; and

(b) If the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an Act as aforesaid on the signification of the Governor-General's assent, or, if not so consented to, shall, on signature by the Governor-General, become an Act as aforesaid.

(2) Every such Act shall be expressed to be made by the Governor-General, and shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent, until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof

by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to :

Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council.

68. (1) When a Bill has been passed by both chambers of the Indian legislature, the Governor-General, may declare that he assents to the Bill or that he withholds assent from the Bill or that he reserves the Bill for the signification of His Majesty's pleasure thereon.

(2) A Bill passed by both Chambers of the Indian legislature shall not become an Act until the Governor-General has declared his assent thereto, or, in the case of a Bill reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General.

69. (1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of any such Act.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

Regulations and Ordinances.

71. (1) The local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General, it shall be published in the Gazette of India and in the local official

gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Indian legislature.

(3) The Governor-General shall send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section.

(3A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(4) The Secretary of State may, by resolution in council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature and may be controlled or superseded by any such Act.

LOCAL LEGISLATURES.

(a) Governors' Provinces.

72A. (1) There shall be a legislative council in every governor's province, which shall consist of the members of the executive council and of the members nominated or elected as provided by this Act.

The governor shall not be a member of the legislative council, but shall have the right of addressing the council, and may for that purpose require the attendance of its members.

(2) The number of members of the governors' legislative councils shall be in accordance with the table set out in the First Schedule to this Act:

and of the members of each council not more than twenty per cent. shall be official members, and at least seventy per cent. shall be elected members :

Provided that—

- (a) subject to the maintenance of the above proportions, rules under this Act may provide for increasing the number of members of any council, as specified in that schedule ; and
 - (b) the governor may, for the purposes of any Bill introduced or proposed to be introduced in this legislative council, nominate, in the case of Assam one person, and in the case of other provinces not more than two persons, having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have for the period for which they are nominated all the rights of the members of the council, and shall be in addition to the numbers above referred to ; and
 - (c) members nominated to the legislative council of the Central Provinces by the governor as the result of elections held in the Assigned Districts of Berar shall be deemed to be elected members of the legislative council of the Central Provinces.
- (3) The powers of a governor's legislative council may be exercised notwithstanding any vacancy in the council.
- (4) Subject as aforesaid, provision may be made by rules under this Act as to—
- (a) the term of office of nominated members of governors' legislative councils, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise ; and
 - (b) the conditions under which and manner in which persons may be nominated as members of governors' legislative councils ; and
 - (c) the qualification of electors, the constitution of constituencies, and the method of election for governors' legislative councils, including the number of members to be elected by communal and other electorates, and any matters incidental or ancillary thereto ; and
 - (d) the qualifications for being and for being nominated or elected a member of any such council ; and

(e) the final decision of doubts or d o the validity of any election ; and

(f) the manner in which the rules are to be carried into effect :

Provided that rules as to any such matters as aforesaid may provide for delegating to the local government such power as may be specified in the rules of making subsidiary regulations affecting the same matters.

(5) Subject to any such rules any person who is a ruler or subject of any State in India may be nominated as a member of a governor's legislative council.

72B. (1) Every governor's legislative council shall continue for three years from its first meeting :

Provided that:—

(a) the council may be sooner dissolved by the governor ; and

(b) the said period may be extended by the governor for a period not exceeding one year, by notification in the official gazette of the province, if in special circumstances (to be specified in the notification) he so think fit ; and

(c) after the dissolution of the council the governor shall appoint a date not more than six months, or, with the sanction of the Secretary of State, not more than nine months from the date of dissolution for the next session of the council.

(2) A governor may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council.

(3) Any meeting of a governor's legislative council may be adjourned by the person presiding.

(4) All questions in a governor's legislative council shall be determined by a majority of votes of the members present other than the person presiding, who shall, however, have and exercise a casting vote in the case of an equality of votes.

72C. (I) There shall be a president of a governor's legislative council, who shall, until the expiration of a period of four years from the first meeting of the council as constituted under this Act, be a person appointed by the governor, and shall thereafter be a member of the council elected by the council and approved by the governor :

Provided that, if at the expiration of such period of four years the council is in session, the president then in office shall continue in office until

the end of the current session, and the first election of a president shall take place at the commencement of the next ensuing session.

(2) There shall be a deputy-president of a governor's legislative council who shall preside at meetings of the council in the absence of the president, and who shall be a member of the council elected by the council and approved by the governor.

(3) The appointed president of a council shall hold office until the date of the first election of a president by the council under this section, but he may resign office by writing under his hand addressed to the governor, or may be removed from office by order of the governor, and any vacancy occurring before the expiration of the term of office of an appointed president shall be filled by a similar appointment for the remainder of such term.

(4) An elected president and a deputy-president shall cease to hold office on ceasing to be members of the council. They may resign office by writing under their hands addressed to the governor, and may be removed from office by a vote of the council with the concurrence of the governor.

(5) The president and the deputy-president shall receive such salaries as may be determined, in the case of an appointed president, by the governor, and in the case of an elected president or deputy-president, by Act of the local legislature.

72D. (1) The provisions contained in this section shall have effect with respect to business and procedure in governors' legislative councils.

(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed :

Provided that—

- (a) the local government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject ; and

- (b) the governor shall have power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department; and
 - (c) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the governor, communicated to the council.
- (3) Nothing in the foregoing sub-section shall require proposals to be submitted to the council relating to the following heads of expenditure:—
- (i) contributions payable by the local government to the Governor-General in Council; and
 - (ii) interest and sinking fund charges on loans; and
 - (iii) expenditure of which the amount is prescribed by or under any law; and
 - (iv) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and
 - (v) salaries of judges of the high court of the province and of the advocate-general.
- (4) If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the governor shall be final.
- (5) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the governor may certify that the Bill or any clause of it or, the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further proceedings shall be taken by the council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.
- (6) Provision may be made by rules under this Act for the purpose of carrying into effect the foregoing provisions of this section and for regulating the course of business in the council, and as to the persons to preside over meetings thereof in the absence of the president and deputy-president, and the preservation of order at meetings; and the rules may provide for the number of members required to constitute a quorum and for prohibiting or regulating the asking of questions on and the discussion of any subject specified in the rules.

(7) Standing orders may be made providing for the conduct of business and the procedure to be followed in the council, in so far as these matters are not provided for by rules made under this Act. The first standing orders shall be made by the governor in council, but may, subject to the assent of the governor, be altered by the local legislatures. Any standing order made as aforesaid, which is repugnant to the provisions of any rules made under this Act, shall, to the extent of that repugnancy but not otherwise, be void.

(8) Subject to the rules and standing orders affecting the council, there shall be freedom of speech in the governors' legislative councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such council, or by reason of anything contained in any official report of the proceedings of any such council.

72E. (1) Where a governor's legislative council has refused leave to introduce, or has failed to pass in a form recommended by the governor, any Bill relating to a reserved subject, the governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the council have not consented thereto, be deemed to have passed, and shall on signature by the governor become an Act of the local legislature in the form of the Bill as originally introduced or proposed to be introduced in the council or (as the case may be) in the form recommended to the council by the governor.

(2) Every such Act shall be expressed to be made by the governor, and the governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local legislature and duly assented to :

Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat.

**(b) Lieutenant-Governors' and Chief
Commissioners' Provinces.**

73. (1) For purposes of legislation, the council of a lieutenant-governor having an executive council, shall consist of the members of his executive council and of members nominated or elected as hereinafter provided.

(2) * * *

(3) The legislative council of a lieutenant-governor not having an executive council, or of a chief commissioner shall consist of members nominated or elected as hereinafter provided.

(4) * * *

[74 *Constitution of legislative councils in Bengal, Madras and Bombay.*—
Omitted by Part II of Schedule II of 9 and 10 Geo. 5, Ch. 101.]

75. *Meetings of legislative councils of Bengal, Madras and Bombay.*—
Omitted by Part II of Schedule II of 9 and 10 Geo. 5, Ch. 101.]

76. (1) The number of members nominated or elected to the legislative council of a lieutenant-governor or chief commissioner, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such council, be such as may be prescribed by rules made under this section.

Provided that the number of members so nominated or elected shall not, in the case of the legislative council of a lieutenant-governor, exceed one hundred.

(2) At least one-third of the persons so nominated or elected to the legislative council of a lieutenant-governor or chief commissioner must be non-officials.

(3) The Governor-General in Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected members of any of those legislative councils, and as to the qualifications for being, and for being nominated or elected, a member of any of those councils, and as to any other matter for which rules are authorised to be made under this section, and as to the manner in which those rules are to be carried into effect.

(3a) Rules made under this section may provide for the final decision of doubts or disputes as to the validity of an election.

(3b) Subject to any rules made under this section, any person who is a ruler or subject of any state in India shall be eligible to be nominated a member of a legislative council.

(4) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Indian legislature or the local legislature.

77. (1) When a new lieutenant-governorship is constituted under this Act, the Governor-General in Council may, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute the lieutenant-governor in legislative council of the province, as from a date specified in the notification, a local legislature for that province, and define the limits of the province for which the lieutenant-governor in legislative council is to exercise legislative powers.

(2) The Governor-General in Council may, by notification, extend the provisions of this Act relating to legislative councils of lieutenant-governors, subject to such modifications and adaptations as he may consider necessary, to any province for the time being under a chief commissioner.

78. (1) A lieutenant-governor or a chief commissioner who has a legislative council may appoint such times and places for holding the sessions of his legislative council as he thinks fit, and may also, by notification or otherwise, prorogue the council, and any meeting of the legislative council of a lieutenant-governor or chief commissioner may be adjourned by the person presiding. Every lieutenant-governor who has no executive council, and every chief commissioner who has a legislative council, shall appoint a member of his legislative council to be vice-president thereof.

(2) In the absence of the lieutenant-governor or chief commissioner from any meeting of his legislative council the person to preside thereat shall be the vice-president of the council, or, in his absence, the member of the council who is highest in official rank among those holding office under the Crown who are present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest, or when questions are asked the vice-president, or the member appointed to preside.

(3) All questions at a meeting of the legislative council of a lieutenant-governor or chief commissioner shall be determined by a majority of votes of the members present other than the lieutenant-governor, chief commissioner, or presiding member, who shall, however, have and exercise a casting vote in case of an equality of votes.

(4) Subject to rules affecting the council, there shall be freedom of speech in the legislative councils of lieutenant-governors and chief commis-

sioners. No person shall be liable to any proceedings in any court by reason of his speech or vote in those councils, or by reason of anything contained in any official report of the proceedings of those councils.

79. [*Powers of local legislatures.*—Omitted by Part II. of Sch. II of 9 and 10 Geo. 5 Ch. 101.

80. (1) At a meeting of a local legislative council (other than a governor's legislative council) no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

(2) Omitted.

(3) Notwithstanding anything in the foregoing provisions of this section, the local Government [of a province other than a governor's province] may, with the sanction of the Governor-General in Council, make rules authorising, at any meeting of the local legislative council, the discussion of the annual financial statement of the local government, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this subsection for any council may provide for the appointment of a member of the council to preside at any such discussion [or when questions are asked] in the place of the lieutenant-governor or chief commissioner, as the case may be, and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Indian legislature or the local legislature.

(4) The local government of any province (other than a governor's province) for which a local legislative council is hereafter constituted under this Act shall, before the first meeting of that council, and with the sanction of the Governor-General in Council, make rules for the conduct of legislative business in that council (including rules for prescribing the mode of promulgation and authentication of laws passed by that council.)

(5) The local legislature of any such province may, subject to the assent of the lieutenant-governor or chief commissioner, alter the rules for the conduct of legislative business in the local council (including rules prescribing the mode of promulgation and authentication of laws passed by the council), but any alteration so made may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect.

(c) **General.**

80A. (1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature.

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

- (a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act ; or
- (b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty ; or
- (c) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces ; or
- (d) affecting the relations of the government with foreign princes or states ; or
- (e) regulating any central subject ; or
- (f) regulating any provincial subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian legislature, in respect of any matter to which such declaration applies ; or
- (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or
- (h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local legislature without previous sanction ; or

- (i) altering or repealing any provision of an Act of the Indian legislature made after the commencement of the Government of India Act, 1919, which by the provisions of such first-mentioned Act may not be repealed or altered by the local legislature without previous sanction :

Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

- (4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

S0B. An official shall not be qualified for election as a member of a local legislative council, and if any non-official member of a local legislative council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat on the council shall become vacant :

Provided that for the purposes of this provision a minister shall not be deemed to be an official and a person shall not be deemed to accept office on appointment as a minister.

S0C. It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the governor, lieutenant-governor or chief commissioner, any measure affecting the public revenues of a province, or imposing any charge on those revenues.

81 (1) When a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner, may declare that he assents to or withholds his assent from the Bill.

(2) If the governor, lieutenant-governor or chief commissioner withholds his assent from any such Bill, the Bill shall not become an Act.

(3) If the governor, lieutenant-governor or chief commissioner assents to any such Bill, he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by the governor, lieutenant-governor or chief commissioner.

(4) Where the Governor-General withholds his assent from any such Act, he shall signify to the governor, lieutenant-governor or chief commissioner in writing his reason for so withholding his assent.

81A (1) Where a Bill has been passed by a local legislative council, the governor, lieutenant-governor or chief commissioner may, instead of declaring

that he assents to or withholds his assent from the Bill, return the Bill to the council for reconsideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under this Act, may, and if the rules so require, shall, reserve the Bill for the consideration of the Governor-General.

(2) Where a Bill is reserved for the consideration of the Governor-General, the following provisions shall apply :—

- (a) The governor, lieutenant-governor or chief commissioner may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the council with a recommendation that the council shall consider amendments thereto :
- (b) After any Bill so returned has been further considered by the council, together with any recommendations made by the governor, lieutenant-governor or chief commissioner relating thereto, the Bill, if re-affirmed with or without amendment, may be again presented to the governor, lieutenant-governor or chief commissioner :
- (c) Any Bill reserved for the consideration of the Governor-General shall, if assented to by the Governor-General within a period of six months from the date of such reservation, become law on due publication of such assent, in the same way as a Bill assented to by the governor, lieutenant-governor or chief commissioner, but if not assented to by the Governor-General within such period of six months, shall lapse and be of no effect unless before the expiration of that period either—
 - (i) the Bill has been returned by the governor, lieutenant-governor or chief commissioner for further consideration by the council ; or
 - (ii) in the case of the council not being in session, a notification has been published of an intention so to return the Bill at the commencement of the next session.

(3) The Governor-General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.

82. (1) When an Act has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty in Council to signify his disallowance of the Act.

(2) Where the disallowance of an Act has been so signified, the governor, lieutenant-governor or chief commissioner shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

83. [*Rules for conduct of legislative business.*]—Omitted.

Validity of Indian Laws.

84. (1) A law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :—

- (a) in the case of an Act of the Indian legislature or a local legislature, because it affects the prerogative of the Crown ; or
- (b) in the case of any law, because the requisite proportion of non-official members was not complete at the date of its introduction into the council or its enactment ; or
- (c) in the case of an Act of a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully confer on magistrates in the exercise of authority over other British subjects in the like cases.

A law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy, but not otherwise, be void.

(2) Nothing in the Government of India Act, 1919, or this Act, or in any rule made thereunder, shall be construed as diminishing in any respect the powers of the Indian legislature as laid down in section sixty-five of this Act, and the validity of any Act of the Indian legislature or any local legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject, or a central subject, as the case may be, and the validity of any Act made by the governor of a province shall not be so open to question on the ground that it does not relate to a reserved subject.

PART VIA.

Statutory Commission.

84A (1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State with the concurrence of both Houses of Parliament shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government, then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

(3) The Commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

COMMENTS.

Ss. 63—84 (both inclusive).

Below is given a general description and criticism of the constitution and powers of the Indian Legislatures, both Imperial and Provincial. Here we append some remarks on the extent of the law-making powers of the Indian Legislative Councils.

The law-making powers of the Indian legislatures, as laid down in s. 65 of the present Act, (and s. 79 for the local councils) are not exhaustive. Under various Acts of Parliament the Indian councils, like other British legislatures with limited powers, have power to make laws on specified subjects with

more extensive operation than laws made under its ordinary power. Thus the Extradition Act of 1870, the Slave Trade Act of 1876, the Fugitive Offenders Act of 1881, the Colonial Courts of Admiralty Act of 1890, the Colonial Probates Act of 1892, and the Merchant Shipping Act of 1894, have each given wider powers than are contained in the provisions of this Act.

As regards the general powers of the Indian legislatures, the leading case is that of *Queen vs. Burah* (1878, L. R. 3, App. Cas. 889). In that case an act of the Indian legislature, (XII of 1869) was questioned. By that act the Garo Hills were removed from the jurisdiction of the ordinary civil and criminal courts, and the administration of civil and criminal justice in those territories was vested in officers appointed by the Lieutenant-Governor of Bengal. By s. 9 of that Act the Lieutenant-Governor was authorised to extend the operation of the Act to any of the adjoining mountains. The Privy Council maintained the validity of the Act as well as that of the ninth section. It was held that (1) the Act was not inconsistent with the Indian High Court; (2) it was in its general scope within the powers of the Governor-General in Council; (3) s. 9 was conditional legislation and not a delegation of legislative authority; and (4) where plenary powers of legislation exist as to particular objects, they may be well exercised either absolutely or conditionally. In delivering the judgment of the Privy Council in this case Lord Selborne said :—

“The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. *But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself.* The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that ques-

tion ; and the only way in which they can do so is by looking to the terms of the instrument, by which, affirmatively, the legislative powers were created, and by which, negatively, they were restricted."

I The Origin and Development of the Indian Legislature.

The legislatures in India are derived from and dependent upon the executive. In theory they were merely an extension of the executive councils of the Governor-General and of the Presidency Governors. In the case of the Lieutenant-Governors and Chief Commissioners without executive councils, the Legislative Councils are, it would seem, in point of law, a body convened by the executive authority to pass laws. The supreme Legislature consists of the executive chief *plus* a varying number of elected and nominated members. They are distributed in two chambers, in the case of the Central Indian Legislature. That the legislatures are dependent upon the executive is evident from the fact that the executive guides and controls them at every stage, whether it is in making laws, in discussing the finances, or in criticising the administration of the country. They are also derived from the executive. The fact, however, that the Indian legislatures are derived from the executive, does, by itself, in no way constitute a peculiarity of the Indian system. The legislative authority in every modern civilised state all the world over is derived from the executive. It may seem strange but is yet true that in the political development of every modern nation the executive had the precedence of the legislative. In fact the whole legislative authority was once centered in the executive. But while in the democratic countries the trend of of political development has been towards a gradual separation, resulting either in a complete independence of the legislative and

executive authorities, as in the case of the United States, or at least the control of the executive by the legislative authority as in England and France. In India, on the other hand, the legislative is merely an extension of the executive, the creature, and therefore a dependent, that at every stage is conscious of its dependence. We find that even in England, the Cabinet *i. e.* the executive collectively, proposes, frames, initiates and carries through all legislative measures; and the legislative assembly *i. e.* Parliament, has merely the power, under the present circumstances, of criticising, amending, and, in the last instance, rejecting the measures proposed by the executive. In the last instance, of course, the legislative body, bringing about the rejection of the measures of the executive, does so, not so much perhaps because it objects to the measures, as because it objects to the executive which had charge of those measures; and in that way, by destroying their off-spring, they help to destroy the parent also. In India, on the other hand, the supreme executive hold their position entirely independent of the legislative. They are appointed to their posts for a term of years which cannot be determined by the desires of the Legislative Councils. Their membership of the Legislature arises from their office; *i. e.* they are members of the legislature *because* they are officers, and not that they are officers *because* they are members and leaders of the legislature.

The legislative council, as distinct from the Executive, may be said to have commenced in India with the Charter Act of 1833, which added a special member to the Governor-General's Executive Council to assist the latter in making laws and regulations. That special councillor, though paid as other members of the Executive Council, had no executive functions till 1853, when he was made a full member of the Executive Council, subsequently known as the Law Member of the Government of India. The distinct legislature begun in 1833, was amplified in 1853, and reformed in 1861, by the Indian Councils Act of that year, when Indians were for the first time admitted by official nomination to that body. The first reform of the new

legislative councils in the central and provincial governments was made in 1892, when the principle of indirect election of the non-official members was accepted, and the right of a general discussion of the annual Budget conceded. Direct election of members, with the right to discuss the Budget and move non-binding resolutions, came in 1909, which, however, maintained the principle of an official majority in the central Legislative Council.

Said Lord Morley on that Occasion :—

“While I desire to liberalise as far as possible the Provincial Councils, I recognise that it is an essential condition of this policy that the Imperial supremacy shall be in no degree compromised. I must, therefore, regard as essential that Your Excellency’s Council, in its legislative as well as its executive character, should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes, and must always owe, to His Majesty’s Government and to the Imperial Parliament. I see formidable drawbacks, that have certainly not escaped Your Excellency, to the expedient which you propose, and I cannot regard with favour the power of calling into play an official majority while seeming to ‘dispense with it. I am unable to persuade myself that to import a number of gentlemen, to vote down something upon which they may or may not have heard the arguments, will prove satisfactory. To secure the required relations, **I am convinced that a permanent official majority in the Imperial Legislative Council is absolutely necessary.**”

The considerations which led Lord Morley to accept the discontinuance of an official majority in the Provincial Councils were various and all powerful. (1) The field for legislation

left to the Provincial Council was very limited. (2) The composition of the provincial Councils, representing a variety of interests, seldom likely to be unanimous, and to offer a concerted opposition to the Government, was in itself a sufficient guarantee against hasty, ill-considered or dangerous legislation. (3) The presence in the councils of nominated members would be another safeguard against provincial legislation of a radical description. (4) In addition to all this was the power of the Local Government in the first instance, and of the Viceroy afterwards, to veto bills passed by the councils, if they do not approve of those measures. (5) Finally, in the words of Lord Morley, "If, however, the combination of all these non-official members against the Government were to occur, that might be a very good reason for thinking that the proposed measure was really open to objection, and should not be proceeded with."

These very reasons could also be adduced for a similar course in the Imperial Legislative Council. The field for legislation, though wide, was not all-embracing. The presence of the nominated element was even more prominent in the Imperial than in the Provincial Councils, and its composition not less diverse. The Viceroy, and, above him, the Secretary of State, had the power of refusing assent, while the almost inconceivable combination of the divergent elements in the non-official membership of the Viceregal Council would be a more emphatic condemnation of a measure in the Imperial Council, than any such combination could offer in the Provincial Councils. In the ten years during which the councils had been working, the Government of India hardly ever had an occasion to make good their proposals by the use of their official majority. And yet Lord Morley thought fit absolutely to insist upon it. His only reason was the necessity he alleged that the supreme council, both Legislative and Executive, should be so composed as to allow of a smooth fulfilment of the obligations of the Government of India towards the Home Government and the Imperial Parliament. The maintenance of a permanent official

majority is not always so great a palladium as is implied by Lord Morley's statements. Even in the old state of things—before the reforms of 1909—when the Government of India was an unadulterated bureaucracy, the spectacle of the Government of India differing from their constitutional superior in Whitehall was not entirely unknown. And if an exclusive bureaucracy could occasionally prove restive, the presumption of a purely democratic assembly proving altogether unamenable to the autocracy of Charles Street cannot be said to be altogether unreasonable. But just as the old unmitigated bureaucracy used to be brought to reason, where it showed a refractory tendency, by the salutary power reserved to the Viceroy to overrule his Council, so there is no reason to believe, that the same expedient would not succeed with a democratic legislature in India.

The latest reforming legislation has, however, abandoned this obsolete principle of an official majority, and substituted new devices for attaining the old end. The Indian legislatures are not even now sovereign law making bodies. They are not sovereign because (1) they cannot make laws, like a sovereign legislative authority, on any topic whatsoever, and touching any person or place within their jurisdiction. Thus they cannot pass laws affecting (a) Acts of British Parliament passed after 1860 and extending to British India, including therein the Army Act and Air Force Act. They cannot touch (b) Acts of Parliament enabling the Secretary of State to raise money in England on behalf of the Government of India, (c) and in general, affecting any part of the written or unwritten constitutions of the United Kingdom or affecting the authority of Parliament; (d) nor can they pass any laws on which may depend the allegiance of the subjects of the Crown of Great Britain or the sovereignty or dominion of the King-Emperor over any part of British India.* Of course they cannot alter or amend in any way this main Act, the Government of India

*See 65 (2). The Indian legislatures cannot pass any law empowering any Court in India, other than a High Court, to inflict the death penalty on the European British subjects of His Majesty without the previous sanction of the Secretary of State in Council.

Act of 1919, on which now their own existence and authority depend.

II. The Chief characteristics of the Indian Legislatures.

Besides these kinds of laws, which they can in no way touch, there are other subjects on which, though competent to pass laws, they cannot undertake legislation without the previous sanction of the Governor-General. Such subjects are : (a) the public debt and public revenues of India, or imposing any charges on the same, (b) the religion and religious rites and usages of the British subjects in India, (c) the relations of the Government with foreign princes or states, (d) and the discipline and maintenance of any part of His Majesty's Military and Naval forces, (e) and any measure regulating any provincial subject which has not been reserved by rules under the present Act for exclusive legislation by the central legislature; or repealing or amending any act of a provincial legislature, or an ordinance by the Governor-General. (2) Besides being precluded from passing any laws of the classes enumerated above, there is a further limitation upon their authority which make them non-sovereign. All laws passed by them may be declared *ultra vires* by the court of law, should any such law be involved in a case coming before them in the ordinary course of their work.

Further, even as far as British India is concerned, the whole legislative authority is not centred in them. Apart from the omnipotent British Parliament, power is vested in the Governor-General to pass ordinances independent of his council, which ordinances have all the force of laws duly passed by the council at least for six months,*

*See s. 72.

Before proceeding to discuss the composition and functions of the Indian legislatures under the Act of 1919, we may summarise their salient characteristics as under:—

- (a) They are non-sovereign law-making bodies,
- (b) derived from and dependent upon the Executive,
- (c) with concurrent legislative authority, often overriding their own powers,
- (d) and having their scope definitely restricted in all departments of their activity.

Previous to 1919, they had the remarkable distinction of being single-chamber legislatures, which still endures in the provincial councils, but is discarded in the Imperial Indian Legislature. Their composition and the basis of their electorates still continue to be peculiar, but the old feature of a standing official majority has now been dropped. The old connection of the executive head of the government as an *ex-officio* president of the legislature is likewise abandoned, though the Viceroy and the provincial satraps still possess powers of calling, proroguing, dissolving or addressing their legislatures.

III. The Composition of the Indian Legislatures.

The central Indian Legislature is, under the Act of 1919, a bicameral institution. The two chambers are known, respectively, as the Council of State and the Legislative Assembly. The former continues for 5 years, and the latter for three, unless sooner dissolved by the Governor-General, who is an integral part of the Legislature by s. 63.

The Council of State consists of 60 members of whom 33 are elected, and the remaining 27 nominated by the Governor-

General, so, however, that not more than 20 members should be officials, and one should be a person nominated as the result of an election in Berar. Of the elected members :—

Non-Muhammadan constituencies give 16 members.

Muhammadan	„	„	8	„
European Commerce	„	„	3	„
General	„	„	2	„
Sikhs	„	„	1	„

Of these Non-Muhammadan from :— and Muhammadan from

Madras	...	are	4	Madras	are	1
Bombay	„		3	Bombay	„	2
Bengal	„		3	Bengal	„	2
United Provinces	„		3	United Provinces	„	2
Punjab	„		1	Punjab	„	*
Bihar and Orissa	„		2	Bihar and Orissa	„	1

European Commerce has one each in Bombay, Bengal and Burma, while the general constituencies are formed, one each, in Assam and Burma. Punjab has a special constituency for the Sikhs.

These make 30 out of the 33 elected members of the Council of State. But the remaining three are to be found in the following constituencies entitled to representation in rotation viz :—2 for East and West Punjab (Muhammadan) and Bihar and Orissa (non-Muhammadan) all the three being bracketed together ; and 1 from Assam (Non-Muhammadan) and Assam (Muhammadan) both being bracketed together. The rule about representation in rotation by bracketed constituencies allows alternate elections, to the first two (if there are 2 members between 3 constituencies), or the first one at the first general election and all bye-elections for the rest of the life of the Council of State, and all subsequent odd general elections and bye-elections following ; while the second two, (or the second one as the case may be) are allowed the right at the second and all *even* general elections following, as well as their respective bye-elections following. Bihar and Orissa (non-

Muhammadian) is entitled to elect a *third* member to the second, fourth, and succeeding alternate Councils of State.

IV. Qualifications and Disqualifications of the Candidates.

(a) Non-British subjects, (b) females, (c) members of another legislature constituted under this Act, (d) legal practitioners dismissed or suspended from practice by a competent court, (e) or those similarly adjudged to be of unsound mind, (f) undischarged insolvents, (g) or, though discharged, yet without certificate from a proper court that the insolvency was caused by misfortune and not misconduct, or (h) persons under 25 years of age—are all disqualified from being elected members of the Council of State. But there are modifications of these disqualifications. (1) Thus, if a ruler of an Indian state or any subject of such a state is not ineligible to a local council, such a person cannot be ineligible to the Council of State merely for want of being a British subject. (2) The bar against dismissed or suspended legal practitioners may be removed by an order of the Governor-General in Council for the purpose. (3) Similarly, persons convicted by a criminal court, with a sentence of transportation or imprisonment for more than six months subsisting, cannot be eligible to the Council of State for five years after the sentence has expired, unless the offence is pardoned. (4) And persons guilty of corrupt practices at elections, or convicted under ch. IX A of the Indian Penal Code, and sentenced for a term of imprisonment longer than six months, are similarly debarred for five years. (5) The sex disqualification is removable, presumably, by a resolution passed by the Council of State after one month's notice.

Of the positive qualifications required of the would-be members of the Council of State, only one need be mentioned ; viz. that he must be entered as a voter in the electoral roll of the constituency, special or general, from which he seeks elec-

tion. The disqualifications against voters are less numerous, being comprised in :— (a) want of British citizenship, subject to the qualification above-named ; (b) sex disability, liable to modification as aforesaid ; (c) being under 21 years of age ; (d) unsoundness of mind, and (e) conviction for offence under the Indian Penal Code chapter IX A, or corrupt practices at elections.

The positive qualifications for electors for the Council of State are prescribed on residence, or residence together with community as in the case of Muhammadan electorates, and the holding of land of a certain value, or the possession of a given income, or of some University distinction, or the holding of a title conferred for literary merit, or the past or present tenure of a legislative or local body. The subjoined summary of such qualifications for Bombay and Madras will serve to give a bird's-eye-view of the qualifications required of electors :—

MADRAS

Non-Muhammadan and Muhammadan Constituencies.

A person shall be qualified as an elector for a general constituency, who has resided in the presidency of Madras for not less than 120 days in the previous year, and who—

- (a) holds in the presidency an estate of which the annual income is not less than Rs. 3,000; or
- (b) is registered as a *pattadar* or *inamdar* of land in the presidency on which the assessment, including the water rate, is not less than Rs. 1,500; or
- (c) receives from Government a *malikana* allowance the annual amount of which is not less than Rs. 3,000; or
- (d) was in the previous year assessed on his own account to income-tax on a total income as com-

puted under section 13 of the Indian Income-tax Act, 1918, of not less than Rs. 20,000; or

- (e) is or has been a non-official member of either chamber of the Indian Legislature, or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Madras Legislative Council ; or
- (f) is or has been the non-official president of the Madras Municipal Council or of a district board or taluk board constituted under the Madras Local Boards Act, 1884, or is the non-official vice-president of the said Council or of a district board; or
- (g) is or has been the non-official chairman or is the non-official vice-chairman of a municipal council constituted under the Madras District Municipalities Act, 1884; or
- (h) is or has been a member of the Senate or a Fellow or an Honorary Fellow of any University constituted by law in British India ; or
- (i) is the non-official president or vice-president of any central bank or banking union which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912; or
- (j) is recognised by the Government as the holder of the title of *Shams-ul-Ulama* or of the title of *Mahamahopadhyaya* :

Provided that—

- (i) no person other than a Muhammadan shall be qualified as an elector for the Muhammadan constituency, and

- (ii) no Muhammadan shall be qualified as an elector for the non-Muhammadan constituency.

BOMBAY.

General Constituencies.

A person shall be qualified as an elector for a general constituency who has a place of residence in the constituency and who—

- (a) is in Sind either a *Jagirdar* of the first or second class or a *Zamindar* who, in each of the three revenue years preceding that in which the electoral roll for the time being under preparation is first published under these rules, has paid not less than Rs. 2,000 land revenue on land situated in any district in Sind ; or
- (b) is a Deccan *Sardar* or a Gujarat *Sardar*, that is to say, a person whose name is entered in the list for the time being in force ; or
- (c) is a sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village assessed to land revenue of not less than Rs. 2,000, or a *Talukdar* holding on talukdari tenure land assessed at not less than Rs. 2,000 land revenue, or a co-sharer holding on talukdari tenure a share in any land, which share, if held separately, would be assessed at not less than Rs. 2,000 land revenue, or a *Khot* responsible for the payment of land revenue in respect of an entire village assessed at not less than Rs. 2,000 land revenue; or
- (d) is a holder of land assessed or assessable to land revenue of not less than Rs. 2,000; or

- (e) was, in the financial year preceding that in which the electoral roll for the time being under preparation is first published under these rules, assessed to income-tax on an income of not less than Rs. 30,000; or
- (f) is or has been a non-official member of either chamber of the Indian Legislature, or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Bombay Legislative Council; or
- (g) is or has been the president of the Municipal Corporation of the City of Bombay, or is or has been the non-official president or is the non-official vice-president of a city municipality 1884; or
- (h) is or has been a member of the Senate or a Fellow or Honorary Fellow of any University constituted by law in British India; or
- (i) is recognised by the Government as the holder of the title of *Shams-ul-Ulama* or of the title of *Mahamahopadhyaya* :

Provided that—

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan shall be qualified as an elector for the non-Muhammadan constituency.

Special Constituency.**Bombay Chamber of Commerce Constituency.**

3. A person shall be qualified as an elector for the Bombay Chamber of Commerce constituency who is a member of that Chamber and has a place of residence in India.

Place of Residence.

4. For the purposes of this part a person shall be deemed to have a place of residence in a constituency if he—

- (a) ordinarily lives in the constituency, or
- (b) has his family dwelling-house in the constituency and occasionally occupies it, or
- (c) maintains in the constituency a dwelling-house ready for occupation in charge of servants and occasionally occupies it.

There is, besides, a most intricate and complicated machinery for the registration of voters, preparation of the electoral roll, conduct of elections, scale of election expenses, and the nature of corrupt practices into the details of which we need not go. Suffice it to add that the principle of voting by ballot has been admitted throughout in the new Indian electorates, while the device of proportional representation by the single transferable vote has been admitted in the case of non-Muhammadian Madras constituency. If a member is elected by more than one constituency, he must declare for which of the multiform constituencies he would elect to sit; and the others would then be called upon to elect fresh representatives. Before taking his seat in the Council, each councillor must take an oath of allegiance to the crown in a prescribed form at a meeting of the council, or make an

affirmation to the same effect if his religious beliefs preclude him from taking an oath.

The same disqualifications, with the same modifications, apply to the nominated members, except that holding or acceptance of office is not, at least for the officials among them, a disqualification in their case as it is with the elected members. The nominated members hold office, unless subsequently disqualified, for the full period of the council's normal duration, or for a stated term as in the case of the nominated official members. Of the officials some may be members of the Governor-General's Executive Council, who must all be appointed to one or the other chamber of the central Indian Legislature. They are full members—i. e. qualified to sit and speak and vote—in only one of the chambers to which they are appointed, but they are entitled to appear in and speak before the other chamber as well, though not to vote there. The Governor-General has no official connection beyond the right of addressing the council whenever he likes, and of convening, proroguing and dissolving the body, on suitable occasions. The President of the Council of State is an official nominated by the Governor-General and paid such salary as the Governor-General may prescribe.

The Legislative Assembly.

The Legislative Assembly consists of nominated and elected members. The total is prescribed by S. 63 B of the present Act to be 140, of whom 100 shall be elected and 40 nominated, the latter including 26 officials. The same section, however, permits the number to be increased, provided that at least 5/7 of the members shall be elected, and at least 1/3 of the others shall be non-officials. By the rules made under this section, the total membership of the Legislative Assembly is fixed at 144, of whom 103 are elected and 41 nominated. Prac-

tically the same disqualifications, with the same modifications apply to the electors and candidates as in the case of the Council of State; while the positive qualifications are based on :—

- (i) community, (ii) residence, and
- (iii) (a) ownership or occupation of a building, or
 - (b) assessment or payment of municipal or local taxes, or
 - (c) the assessment or payment of Income-tax, or
 - (d) the holding of land, or
 - (e) membership of a local body.

The following summary of detailed qualifications for the electors in the Bombay Presidency fairly indicates qualifications for all kinds of representation.

BOMBAY.

General Constituencies.

Non-Muhammadian and Muhammadian Constituencies.

A person shall be qualified as an elector for a non-Muhammadian or Muhammadian constituency who, on the 1st day of January next preceeding the date of publication of the electoral roll, had a place of residence within the constituency or within a contiguous constituency of the same communal description and who—

- (a) in the case of the Sind constituencies, on the 1st day of January aforesaid, held in his own right or occupied as a permanent tenant or as a lessee from Government alienated or unalienated land in such constituency on which, in any one of the five revenue years preceeding the publication of the electoral roll, an assessment of not less than

Rs. 37-8-0 land revenue in the Upper Sind Frontier district and of not less than Rs. 75 land revenue in any other district has been paid or would have been paid if the land had not been alienated ; or

(b) in the case of any other constituency, on the 1st day of January, aforesaid held in his own right or occupied as a tenant in such constituency alienated or unalienated land assessed at, or of the assessable value of, not less than Rs. 37-8-0 land revenue in the Panch Mahals or Ratnagiri districts and not less than Rs. 75 land revenue elsewhere ; or

(c) on the 1st day of January aforesaid was the alienee of the right of Government to the payment of rent or land revenue, amounting to Rs. 37-8 in the Panch Mahals or Ratnagiri or Upper Sind Frontier Districts and of Rs. 75 elsewhere, leviable in respect of land so alienated and situate within the constituency, or was a *khot* or a sharer in a *khoti* village in the constituency. or a sharer in a *bhagdari* or *narvadari* village in the constituency, responsible for the payment of Rs. 57-8 land revenue in the Panch Mahals or Ratnagiri Districts and Rs. 75 land revenue elsewhere ; or

(d) was assessed to income-tax in the financial year preceding that in which the publication of the electoral roll takes place :

Provided that—

(i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and

(ii) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

The European constituency.

A person shall be qualified as an elector for the Bombay (European) constituency whose name is registered on the electoral roll of either European constituency of the Legislative Council of the Governor of Bombay.

(1) A person shall be qualified as an elector for the Sind *Jagirdars* and *Zamindars* constituency who is a *Jagirdar* of the first or second class in Sind, or a *Zamindar* who in each of the three revenue years preceeding the publication of the electoral roll has paid not less than Rs. 1,000 land revenue on land situated in any district in Sind.

(2) A person shall be qualified as an elector for the Deccan and Gujrat *Sardars* and *Inamdars* constituency whose name is entered in the list for the time being in force under the Resolutions of the Government of Bombay or who on the 1st day of January next preceeding the publication of the electoral roll was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village in the presidency of Bombay excluding Sind and Aden, or was the sole holder on *talukdari* tenure of such a village.

The Indian Commerce Constituencies.

Members of the Indian Merchants' Chamber and Bureau and of the Bombay Millowners' Association and of the Ahmedabad Millowners' Association shall be qualified as electors respectively for the constituency comprising the Association of which they are members.

The elected members of the Legislative Assembly are from:—

Province	Total	Constituency				Land
		Non-Muhammadian	Muhammadian	European	Commerce	
Madras	16	10	3	1	1	1
Bombay	12	7	2	2	2nd Commerce	...
Bengal	16	6	6	3	1	1
United Provinces	16	8	6	1	...	1
Punjab	12	3+ (Sikhs)	6	...	...	1
Bihar & Orissa ...	13	8	3	...	...	2
Central Provinces	4	2	1	...	...	1
Assam	4	2 [ropean	1	1	...	...
Burma	4	3 [non-Eu-	...	1	...	...
Delhi	1	General	...	...	...	...
Total	98+5	49+2Sikhs+1General	28+2	9	2+2	7+1

In addition there are 5 members elected at alternate elections, 4 from Bombay, being 2 Muhammadan (rural) 1 landholders, and 1 commerce; and 1 from Bengal representing Indian commerce. Eight constituencies are bracketed for these four Bombay seats, and 3 Bengal constituencies are bracketed for the 1 commerce seat. In all, then, there are 103 elected seats as follows :—

Non-Muhammadans	...	...	49
Muhammadans	...	...	30
Landholders	...	...	8
Europeans	...	...	9
Commerce	...	...	4
Sikhs	...	...	2
General	...	...	1

Total ... 103

In the non-Muhammadan and Muhammadan constituencies above outlined there is a further distinction between rural and and urban constituencies, the former being by far the most

predominant. There are in all 9 urban seats in the Legislative Assembly; and if to that we add the representation of Europeans and the commercial element, as being largely urban interests, we find the aggregate urban representation to be 22, against a rural representation of 81, including the landholders, Sikhs and general constituencies. The qualifications for the two sets vary slightly, as already shown above.

The nominated members have 26 officials and 15 others. This element in the two chambers combined will have a total strength of 68 out of a total joint membership of 204, or just exactly $\frac{1}{3}$, with about 46 of them being officials. Of the officials, some members of the Governor-General's Executive Council have seats in the Assembly. The President of the Assembly is in the first instance nominated by the Governor-General for a period of 4 years, on a salary of Rs. 5,000 per month; but shall be elected by the members of the Assembly from among themselves after the expiry of the term of office of the first President, and on such a salary as may be prescribed by a vote of the Assembly. His election, like that of the Speaker of the House of Commons as also of the Deputy President, must be approved by the Governor-General. The Governor-General has the same connection and rights with the Assembly as with the Council of State. The Assembly is elected only for three years; and will ordinarily be in session for that period, unless sooner dissolved. The period, however, may be extended by the Governor-General, if, under special circumstances, he thinks fit to do so; while not more than six months—or not more than nine months with the special sanction of the Secretary of State—must elapse between the dissolution of one Assembly and the coming together of its successor.

V. The Business of the Central Indian Legislature.

The business ordinarily coming before the Indian Legislature may be classified in four main groups, viz. :—

(A) Law-making, including amendment and repeal of existing laws.

(B) Financial control of the Administration.

(C) General scrutiny of the everyday administration, usually by means of questions addressed to the Executive.

(D) Initiation of new policy, or criticism or condemnation of the policy actually pursued usually by means of definite resolution.

(A) Law making.

As regards the first, the Central Indian Legislature is authorised, by S. 65 of the consolidating act, to make laws :

- (a) for all persons, places, courts and things in British India ; and
- (b) for all subjects and servants of the Crown within other parts of India ; and
- (c) for all native Indian subjects of the King-Emperor without and beyond as well as within British India.
- (d) for the government officers, soldiers, airmen and army-followers, wherever they are serving, in so far as they may not be under the Army Act.
- (e) for all persons employed or serving in the Royal Indian Marine.
- (f) for repealing or altering any law for the time being in force in British India.

We have already noted the limitations to the authority of the Indian Legislature elsewhere, when discussing the non-sovereign characteristic of that body.

**The Course of a Legislative Measure through the Indian
Legislature.**

Legislative measures usually take the form of Bills which may be introduced in the first instance in either chamber of the Legislature, subject to the proviso that the annual Budget is in the first instance presented to the Legislative Assembly, and the Finance Bills, originating therefrom, must similarly be first brought before the lower House. We shall discuss the procedure and peculiarities governing the passage of the Indian Budget through the Legislature in the next section. As a rule the first stage of a Bill in the Legislature is by a motion for leave to introduce that bill, followed by publication in the official gazette of the text of the Bill and a full statement of its objects and reasons. For such a preliminary motion notice of a month must be given in advance, or not more than two months if the Governor-General has directed an extension of the time ; while the previous sanction of the Governor-General, should the nature of the Bill demand it, must also be obtained. This corresponds to the First Reading stage of a Bill in the British Parliament. At the next stage, the motion of which at least three clear days' notice must be given, takes the form that the Bill be taken into consideration. If allowed, the discussion at this stage can only effect the principle of the Bill and its general provisions, as in the Second Reading stage of a Bill in Parliament. After such a discussion, or in place of it, the Bill may, at the next stage of its career, be referred to a Select Committee of the originating chamber, or to a Joint Committee of both the chambers. It is in the Select Committee that the details of the Bill are finally shaped into provisions of a law of the land. When finally settled by the select committee, or Joint Committee of both chambers, or by the whole chamber itself, as the case may be, the Bill may still further be considered and discussed in the chamber of origin ; and any amendments or alteration may be moved according to the Standing Orders in that behalf. This will complete all the stages of a Bill in

the chamber it originated in. When passed by the originating chamber, the Bill is sent to the other chamber, where it may be either (a) agreed to without amendment, in which case an intimation to that effect from the other chamber to the originating chamber will complete the passage of the Bill through the Legislature. When the assent of the Governor-General has been signified to it, such a Bill becomes law, unless disallowed by the Crown on the advice of the Secretary of State. Or (b) the Bill might be considered and amended by the other chamber. The Bill is then returned to the original chamber. If such amendments are agreed to by the originating body, a message to that effect to the other chamber will complete the passage. (c) If no agreement between the two chambers is arrived at as regards the amendments, original or subsequent, on the Bill, and the Bill is not allowed to lapse, a *joint session* of the two chambers must be convened by the Governor General, under the chairmanship of the President of the Council of State. A majority of the total votes at the joint session will be regarded as enough to carry the Bill. But apart from the Joint Session, there is provided a means for settling such differences of opinion between the two chambers by means of *conferences* on such differences of an equal number of members from either House. If future differences are sought to be avoided from the beginning, there is the further mechanism of a Joint Committee of both Houses to consider and settle the details of the Bill. A Bill finally passed and agreed to by both Houses of the Indian Legislature does not become law all at once. It must receive the assent of the Governor-General, and must not be disallowed by the crown within a period of two years. In Britain, the right of the crown to veto bills passed by Parliament is so utterly obsolete that no one pays any regard to the nominal existence of this power in the theory of the constitution. In India the Viceregal veto is a most potent, and living force. The Governor-General has powers of intervention at every stage in the passage of a Bill. (a) If, for example, at the very start of a Bill, he certifies that the Bill, or any clause or

amendment of it affects the safety or tranquillity of British India or any part of it, and directs that no proceedings shall be taken on such a measure, the whole measure must be abandoned. (b) Even when a Bill is duly passed by both Houses, if the Viceroy disagrees with any part of it, he can return the Bill for recommendation by the chambers or either of them. (c) In the event of the two chambers disagreeing on a Bill, it is the Governor-General who puts into motion the device of a joint session for bringing about an agreement. (d) When the Governor-General is unable to assent all at once to a Bill passed by both the Houses, and does not yet want to withhold his assent, he may reserve the Bill for the signification of His Majesty's pleasure thereon, (e) which is quite different from the final Royal veto on an Indian Bill in the shape of disallowance thereof. Of the Bills that *must* be reserved, an analogy is provided in the case of Bills passed by a Governor's Legislative Council, which include such matters as :—

- (a) Religion or religious rites of any class of British Indians.
- (b) Regulating the constitution or function of any University ;
- (c) Attempting to include matters of Reserved Subjects into Transferred Subjects.
- (d) Providing for construction or management of a light railway, other than a municipal tramway.
- (e) Affecting the Land Revenue of a Province, either so as to (i) prescribe a period within which any temporarily settled estate may not be reassessed, or (ii) limit the extent to which land revenue assessment on such estates may be made or enhanced, or (iii) modify materially the general principles of land revenue, if such a change appears to the Governor as likely seriously to affect the public revenues of his province.

Bills affecting any matters with which the governor is specially charged in his Instructions, or any central subject, or the interests of another province *may* be reserved, if not previously sanctioned by the Governor-General.

(f) Bills of the central Legislature, which the Governor-General, desires to see passed into law, may be passed over the head of chamber which refuses to introduce or pass the Bill in a form acceptable to the Governor-General, if the Governor-General certifies that the Bill is essential for the safety, tranquillity or interests of British India or any part thereof. Such a Bill if passed by one chamber and thrown out by the other, may become law as soon as the Governor-General signs it in the form agreed to by one chamber, or in the form recommended by the Governor-General. If the Bill is passed by even one chamber, the Governor-General can still pass it into law by simply signing the Bill over the head of both the chambers. Bills passed in such an extraordinary manner, however, must be laid before Parliament, and must receive His Majesty's assent. And if the Governor-General considers such a law to be immediately necessary, he can put it into force even before the Royal Assent has been received; and the law will be a full, proper law unless disallowed by His Majesty in Council.

(g) All these powers of the Governor-General are in addition to his right to pass Ordinances in times of emergency which have the force of law for a period of six months.

To sum up: The Viceroy can :

- (1) Pass Ordinances for six months having the force of laws;
- (2) Pass Bills over the head of one or both dissenting chambers;
- (3) Prevent the introduction or consideration of Bills he disapproves of;
- (4) Return Bills passed by both Houses for reconsideration and passage in the form recommended;

- (5) Delay any Bill by reserving it for Royal consideration;
- (6) Simply veto Bills passed by both Houses—all this;
- (7) In addition to the Royal Powers of Disallowance.

VI. Critique of the Constitution of the Indian Legislature.

Apart from the inevitable limitation on its powers as a non-sovereign law-making body, the Indian Legislature is thus very effectually restricted, even in the primary functions of law-making. The peculiarity of a double-chamber constitution provides an internal, inherent check upon the possible, though unlikely, excesses of a democratic institution, the real significance of which is apt to be lost sight of by a consideration merely of the letter of the law. The device of Joint Committees, and members' conferences and Joint Sessions are all intended to minimize or avoid those dangers of extreme Indian nationalism, which have not yet matured. In the life-time of the first Indian Legislative Assembly, the extraordinary powers of the Viceroy had to be used twice only:—in certifying the so-called Princes' Protection Bill, and the clause in the Finance Bill of 1923 restoring the increase in Salt Duty which the Assembly had rejected. In both cases the cogency of the popular opposition to the Government action was never denied; and both these measures may be taken to be somewhat of an abnormal character. But making due allowance for all factors, it cannot be said that the Viceregal or Executive control over the present-day Indian Legislature is theoretical or shadowy only; or that the extension of the powers of that body under the Act 1919 errs, if at all, on the side of over-confidence in the people.

Another similar internal check upon possible excesses by these beginnings in the way of democratic legislature is to be found in the composition of the Legislative Assembly and the Council of State. These two chambers do not represent each a

distinct and different set of interests, as the House of Lords and the House of Commons do; nor is the elected element in either returned on such a materially different basis as that of the *Senat* and the *chambre des deputes* in France. Both the chambers of the Indian Legislature represent substantially the same interests: property, community or status; and are elected on nearly the same basis. And yet they tend to be rather tiresome hindrances to one another than salutary checks. The bicameral legislature was unknown in India until 1919, while this creation of that Aet cannot but appear as a wholly unnecessary and retrograde measure to radical thinkers, all the more objectionable because the constitution of the two chambers displays no real difference in representation. The presence, similarly, of the official element, though much reduced, is deplored as evidencing a want of confidence in the elected popular element that the latter has done nothing to deserve. Official element must, indeed, find a place in the Legislature as much to provide expert information on technical questions of administration, as to bring the executive into sympathy with the Legislature. But such official element should get into the Legislature, not *virtute officii* as is the case in India to-day, but by simple election in the ordinary way. For the complete realisation of modern responsible government in democratic states demands that the chief ministers of the state shall be appointed to their office because they possess the confidence of their countrymen as evidenced by their election. They are officials because they have been elected legislators; not legislators because they have risen to be important officers of state. In India, however, the doctrine of complete responsibility to the popular assembly is not yet accepted. The central government is frankly non-responsible in India, and responsible, if at all, only to the British Parliament. The Provincial governments are only partially responsible; and even there with considerable reservation. Complete responsibility of the Indian government to the Indian people may be an ideal to be ultimately aimed at; but it is not yet a fact of our political situation. Under the circumstances, the

Government retaining in the legislature a non-responsible official element *virtute officii*, cannot be reproached for having betrayed an ideal that they have not yet accepted.

Besides the frankly official, there is a still further-though yet smaller-element in the central Indian Legislature, which gives considerable indirect influence to the Executive over the Legislature. The nominated non-officials in the Council and the Assembly make a very small number ; they are, besides, nominated not at the absolute discretion of the Executive, but rather in accordance with some well-known conventions about representing important minorities, which are intentionally left out from the rigid provisions of the statute or the statutory rules. But even so, the presence of a power of nomination, however restricted in scope or numbers, is inconsistent with the creation of a fully democratic legislature. The only justification we might plead on broad grounds of national policy in favour of the continuation of this archaic and inconsistent mechanism is that the Indian people must take time to be habituated to these somewhat novel forms of government ; that the Indian electorates are yet in the process of education ; that they have yet to perceive their powers and possibilities ; that until they realise their responsibilities, those sections of the population which under existing conditions may not succeed in getting a representation by direct election, and which are yet too important to be ignored altogether, would best find representation through this power of nomination vested in the supreme governing authority. On this justification the offence appears shorn of much of its sting, though, of course, its inherent inconsistency cannot be altogether obscured.

Even in the elected section of the Legislature, the representation of the people is obtained on no uniform principle. The authors of the Joint Report on the Indian Constitutional Reforms had pronounced against the retention of the communal electorates, as being opposed to history, and perpetuating class divisions which it would not be in the interests of nation-

building to encourage.* “ We regard any system of communal electorates, therefore, as a very serious hindrance to the development of the self-governing principle.” said Mr. Montagu and Lord Chelmsford. And yet a special electorate for the Muhammadans is retained in all provinces for the local as well as the central legislatures. But the case of the Muhammadans in India may be allowed to stand apart, and be judged rather by political expediency than by strict logic. What, however, distinguishes the Muslim case does not apply to the other communal electorates, like those of the Sikhs in the Punjab. And if representation should not be allowed to communities which would perpetuate racial or religious distinctions, it is still less politic, from the stand-point of nation-building, to institute separate electorates for economic classes. And yet the constitution of the Indian Legislatures provides for all these. It has Muhammadan, non-Muhammadan, and general electorates; further divided into urban and rural constituencies,—or a cross division on economic lines superimposed upon the main division on communal lines. It has special electorates for Europeans, for commerce and for land-holders, again a medley of interests and communities, which are presumed to have an inherent opposition inter se, and therefore given special representation; but which might quite safely have been left to the general territorial electorates for adequate representation. Altogether, then, this careful combination of communal, and racial, and economic and official elements in one and the same representative body precludes the easy combination of them all so as to form a strong, compact, working majority for or against the Government. For political parties of the Western type have yet to be developed in India; and even when they do develop, it is doubtful if they would be quite on the lines of the English party system. The existence of these complex and cross divisions must tend to stereotype a conflict of interests, which would in all probability have been obviated, if from the beginning the new principles of constitutional evolution had dropped any connection with the principles of representation other

* See paras 229-31 of the Report.

than territorial. To secure adequate representation we might try, even in the simple scheme of geographical representation, such improvements as proportional representation or the transferred vote. But these are in a class apart from the breaking up of the representation by cross sections in the electorate. In any event, the existence of such cross sections may quite fairly be taken to be an inherent check upon any ungovernable excesses of democratic zeal.

(B) Contro of Finances.

If the central Indian Legislature is restricted directly or indirectly—in the exercise of its law-making powers, it is no less effectually restricted in the financial control of the administration. By law at present, a statement of the revenue and expenditure of the Government, called the Budget, must be annually submitted to both chambers of the Indian Legislature containing also an estimate of the Ways and Means for the next financial year. The Budget, or such items therein as are made voteable by the Assembly, is passable only by that chamber of the Legislature,—the Legislative Assembly,—the other having simply to agree. But as regards the right of the assembly to vote the Budget, the following vital restrictions must be borne in mind in estimating the importance of that right :—

- (1) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General. This follows the English convention that grants of moneys voted by Parliament cannot be made except on the demand of a minister of the crown. This convention in England and the corresponding statutory provision in India are designed to safeguard against the possible extravagance of a

democratic assembly wanting to placate its constituents, without regard to the general national economy. The provision, as such, is unexceptionable; but it provides quite an effective check on the powers—or, let us say, the extravagance of the Legislature.

- (2) Appropriation of moneys for the following heads of expenditure are beyond the competence of either chamber to vote, or even to discuss, unless the Governor-General otherwise directs :—viz.
- (a) Interest and sinking fund charges on loans ;
 - (b) Expenditure the amount whereof is fixed by law;
 - (c) Salary and pensions of persons appointed by or with the approval of His Majesty, or by the Secretary of State in Council
 - (d) Salaries of chief commissioners and judicial commissioners;
 - (e) Expenditure classified by order of the Governor-General as (i) ecclesiastical, (ii) political or (iii) defence.

Together these heads of expenditure, not open to the vote of Legislative Assembly, make up a large portion of the total expenditure of India. In the Budget Estimates for 1923-24, out of a total budgeted expenditure for Rs. 134,09,57,000, only 16·67 crores was voteable by the Assembly. In all questions of dispute as to whether or not a particular grant is covered by any one of the above five heads, the decision of the Governor-General is made final. The Assembly may, as regards grants voteable by it, assent to, reduce, or refuse a grant; but when the voted demands are again finally submitted to the Governor-General in Council, the latter may, if he thinks any demand refused or reduced by the Assembly is essential to the discharge of his responsibilities, ignore the Assembly; and act as if the demand had been assented to. And this is quite apart from his extraordinary powers in an emergency

to authorise any expenditure he thinks necessary for the safety or tranquillity of British India. The financial control of the Legislature is thus confined to only about 12 per cent. of the total expenditure, and even in the sphere of control allotted to it there are very considerable restrictions.

We may note here the procedure in the central Legislature in connection with the actual passage of the Budget. As a rule the Budget is presented on the 1st of March in each year, that is to say a month before the financial year of the Indian Government expires. The statements of accounts and estimates annexed contain the final Accounts of the financial year expired on the 31st of March last, the Revised Estimates of the year about to expire on the 31st of March next, and the Budget Estimates of the year commencing on the 1st of April next. A separate demand is usually made for each grant, divided into total grant and the detailed account for the total. The discussion; of the Budget in the Assembly is in two stages, the first confined to a consideration of the Budget as a whole, and the second to the detailed grants. In the first stage of the Budget discussion no motion is in order, for the Budget as a whole is not voteable by the Assembly. In the second stage, to which no more than 15 days are allotted by the Governor-General, the Assembly may entertain motions for the reduction or refusal of grants, but not for their increase, or alteration of their destination. There is a rigid time limit on this discussion and if on 5 o'clock of the last day discussion has not terminated, the President of the Assembly automatically applies the closure to the debate, and puts all outstanding questions to the vote. If the Finance Minister's original estimate of expenditure for a demand is exceeded in the course of the year, excess grants may be made on a fresh demand: while supplementary or additional estimates for a current year may also be similarly presented if necessary. For a proper security of the public accounts, a special committee on Public Accounts is constituted by the Assembly every year, consisting of 12 members, of whom not less than $\frac{2}{3}$ must be elected by the non-official members on the principle of proportionate re-

presentation. The remaining members are nominated by the Governor-General, the Finance Minister being the *ex-officio* chairman of that committee. The main duty of this committee is to satisfy itself that the money voted by the Assembly is spent within the scope of the grant, and in doing so it must bring to the notice of the Assembly every re-appropriation from one grant to another, or within one and the same grant itself.

(C) General Scrutiny of Administration.

The same spirit of restriction, tempered with a regard for the changed conditions, animates the further extensions of the Legislature's authority in respect of a general scrutiny of everyday administration. The most powerful means of such a scrutiny is to be found in the right of asking questions to the Executive officers. Any question may be disallowed by the President if in his judgment the subject matter of the question is no concern of the Governor-General in Council. Every question must be asked solely for purposes of eliciting information on a matter of public concern within the special cognisance of the member to whom it is addressed ; and no questions are permitted on :

- (1) Any matter affecting the relations of His Majesty's Government, or of the Governor-General in Council, with any foreign state :
- (2) Any matter affecting the relations of any of the foregoing authorities with any prince or chief under the suzerainty of His Majesty, or relating to the affairs of any such prince or chief, or to the administration of his territories ; and
- (3) Any matter which is under adjudication by a proper court of law.

- (4) In matters, again, which are or have been the subject of controversy between the Governor-General in council and the Secretary of State, or a local Government, no question is permitted except as to matters of fact only.

If an answer to a question is ambiguous or insufficient, a supplementary question may be asked. Every question intended to be asked at a meeting of the Legislative Assembly, for example, must have at least 10 clear days' notice, unless this requirement is waived by the President with the consent of the member for the Government affected. A question must contain no unnecessary names, nor arguments, inferences, or ironical or defamatory expressions. It cannot ask for an expression of opinion, nor the solution of a hypothetical proposition. It may not ask anything about the character or conduct of any person except in his official capacity, and it must not be of inordinate length. Finally, if the question contains any statement by the member himself, he must make himself responsible for the accuracy of his statements.

Motions for Adjournment.

Every business day the first hour is set apart for the answering of questions. But with the foregoing conditions, it is rarely that by means of questions in the Legislature, grave and sudden abuses of power or any other problem of administration can be tackled in the Legislature. It is accordingly provided that as soon as the questions are over, and before the ordinary business of the day is entered upon, any member may ask for leave for a motion for an adjournment of the business of the House to discuss a *definite matter of urgent public importance*. To do so, the member intending to ask for such a permission must leave with the Secretary, before the day's sitting has commenced, a

written statement of the matter proposed to be discussed. The President, if he considers the proposed matter to be in order, reads the member's statement to the House, and asks if the member has leave to move for adjournment. If no objection is made the leave is granted as a matter of course. If objection is made, and there are yet 25 members of the Assembly who rise in their places to support the proposal on the President's invitation, leave will be granted, and the motion is made at 4 p. m. that day. If less than 25 members rise to support, the leave is refused. If the leave is granted, and the motion is made that the House do now adjourn, two hours at most are allowed for debating the subject raised ; and the result at the end of the sitting is suffered to affect the Executive as it might. As all such motions must relate to " specific matters of recent occurrence, " no subjects which could or would be otherwise discussed can be included in such a treatment. As the discussion ends in no definite resolution, the vote at the end of it is of no great effect upon the government, who are not by law responsible to the Legislature.

(D) Resolutions.

The only way, then, that the Legislature can initiate or influence general policy is by means of resolutions. which are in the form of recommendations to the Governor-General in Council, and, as such, are not binding upon that authority; but which nevertheless serve to indicate the mind of the country on important problems of policy. Questions like a change in the Fiscal Policy, or in the ownership and management of the country's Railways, or the Indianisation of public service, all take their origin in such a resolution. Every resolution intended to be moved must be notified 15 clear days in advance, unless the President, with the concurrence of the Government, has waived the requirement of notice. During the period of the notice the Governor-General may disallow

any resolution, or any part of it, simply on the ground that it cannot be moved without detriment to the public interest, or that it relates to a matter not primarily the concern of the Governor-General in Council. Resolutions in the Legislature must avoid all topics on which questions are not permitted; and they must be so worded as to be clearly and precisely expressed, raising a definite issue, without any arguments, inferences, ironies or defamatory statements. They must not refer to individuals except in their official capacity. Any amendment on a resolution must be notified 2 clear days in advance, unless the notice is waived by the President. The discussion and voting on the Resolutions are very carefully regulated by rules and standing orders, a summary of which has been given above.

This general, brief review of the constitution, composition, functions and procedure in the Indian Legislature leads us to the following conclusions :—viz.

- (1) That the bicameral constitution imports a novel, needless complication in the legislative machinery, without even the compensation of the two chambers representing distinct interests ;
- (2) That the composition of the Legislature, with the presence of official and nominated members, and others elected on a medley of seemingly or really conflicting caste, sect, or economic interests makes it exceedingly difficult, if not unlikely, for such a body to act in harmony on a uniform national impulse ;
- (3) That the powers assigned to the Legislature, though considerably extended, are nevertheless substantially restricted at every step directly and indirectly, thereby taking away seriously from the utility of these institutions ; and lastly,
- (4) That though the procedure is apparently modelled on that of the British Parliament, and is conceived

to combine dignity and decorum with freedom of discussion, nevertheless seems to lack the spontaneity characteristic of British Parliamentary procedure.

We may round up this part of our discussion by mentioning a few points of miscellaneous interest. The Indian Legislature, in both its chambers, as well as the Provincial legislatures, are free to prescribe their own rules of procedure, though the first Rules and Standing Orders were made for them by the executive. The quorum of members required for the valid transaction of business seems to be rather large, being 15 for the Council of State out of a total membership of 60, and 25 for the Legislative Assembly out of a total of 144. The Indian legislatures have no other privileges beyond being authorised to elect their own Presidents and make their own rules of procedure after a term. For individual members, the only important privilege is freedom of speech consistent with the rules of the legislature ; but even here, as at least one celebrated case in the Bombay Legislative council shows, the Executive is inclined to look with stern displeasure upon any excessive use of that privilege. And the displeasure of the Executive is a real asset in India, which not even the richest and the most popular non-official persons can afford quite to ignore.

The Provincial Legislatures.

The provincial legislatures are, on a less grandiose scale, the repetition of the central legislature. In one important respect only do they differ from the latter, being all single-chambered institutions. By S. 72 A of the Act, the Provincial Councils are to consist of " the members of the executive council, and the members nominated or elected as provided by this

Act." The Act prescribes the maximum strength of the different provincial councils as under viz :—

Province	Total	} subject to the general provision that the numbers so fixed might be exceeded by rules under this Act. Taking advantage of this permission, the total membership of the several council has been actually raised, till at present they consist of :—
Madras	118	
Bombay	111	
Bengal	125	
United Provinces ...	118	
Punjab	83	
Bihar & Orissa ...	98	
Central Provinces ...	70	
Assam	53	

				Elected	Nominated		Total.
					Offg.	Non-offg.	
1.	Madras	...	...	98	23	6	127
2.	Bombay	...	...	86	20	5	111
3.	Bengal	...	...	113	20	6	139
4.	U. P.	...	...	100	18	5	123
5.	Punjab	...	...	71	16	6	93
6.	Bihar and Orissa	...	...	76	18	9	103
7.	C. P.	...	...	53	10	5	68
8.	Assam	...	...	39	9	5	53

The official representation as shown above is the maximum, but the Governor may nominate less than the maximum number, in which case he would be able to nominate more non-officials.

As between the official and the non-official element, the elected and the nominated elements, the Act provides that: "Not more than 20 per cent. shall be official members, and at least 70 per cent. shall be elected members." This proportion is fairly maintained in the several councils as shown above.

The governor of a province is given the right to nominate, in addition to the members already nominated, one member in Assam, and not more than two in other provinces, as experts to help in the discussion and passage of any Bill requiring some kind of technical knowledge.

Every such council is constituted for three years, subject to the Governor's right to dissolve it sooner, and to extend the term by notification in the gazette for not more than a year under special circumstances. Similar provisions are made as regards Presidents and deputy-Presidents of the Provincial councils as in the case of the Assembly, the Presidents being nominated for a definite period in the first instance and elected by the council subsequently, and the deputy-President being always so elected. Their salaries are also similarly determined, being fixed by the Governor for the President in the first instance, and being determined by the council for the President subsequently, and for the Deputy President always.

The same attempt at securing adequate or proportionate representation for all interests, communities or classes, as is noticeable in the composition of the central legislature, is visible in the Provincial councils as well. The following illustration is taken from the composition of the Bengal Legislative Council.

The following table shows the composition of the Bengal Legislative Council.

CLASS OF ELECTORATE			No. of Electorates of this class	No. of Members
Non-Muhammedan	...	...	42	46
Muhammedan	...	...	34	39
European	...	...	3	5
Anglo-Indians	...	...	1	2
Landholders	...	...	5	5
University	...	...	1	1
Commerce and Industry	...	...	8	15
Total...			94	113

Of the 94 constituencies all but 9 (*i.e.* University and Commerce) are arranged on a territorial basis, each constituency consisting of a group of electors having the prescribed

qualification, which gives them the vote, and living in that area. The normal constituency is a district or part of a district, or a group of adjacent municipalities in the case of urban constituencies. Some large towns make each a constituency by itself, the city of Calcutta being divided into 8 constituencies, 6 non-Muhammadan and 2 Muhammadan.

The qualification for candidates and voters varies from province to province in detail. Broadly speaking both in rural as well as urban constituencies the franchise is based on property qualification measured by the payment of a prescribed minimum of Land Revenue, or its equivalent, or of Income Tax or Municipal taxes.

In all provinces retired, pensioned or discharged officers and men of the regular army are entitled to vote irrespective of their property or income—a handsome recognition of the services of such men in the cause of the Empire. The total electorate consists of :—

Madras	1,258,156	} This is a very small electorate in proportion to the population of the country ; but as literacy is not now insisted upon as a qualification it could have done no harm had the electorate been increased further. The property qualification seems
Bombay	548,419	
Bengal	1,021,418	
United Provinces	1,347,278	
Punjab	505,361	
Bihar & Orissa	327,564	
Central Provinces	144,737	
Assam	203,291	}
Burma	2,500,000	

much too high in proportion to the wealth of the people, which does not exceed Rs. 50 per head under the most liberal estimates.

The disqualifications of voters and candidates run on the same general lines in the Provincial councils as in the Central legislature. Bombay and Madras and Burma have enfranchised the women ; and the sex bar is thus very much weakened. For the rest some of the disqualifications, and the attendant power of the Executive to annul those disqualifications evince the transitional character of the Indian constitution.

The rules of procedure in these councils are modelled on the similar provisions of the Central Legislature ; and the governor's powers in respect of certifying bills, restoring grants refused by the Council, reserving Bills, returning them for reconsideration, and having them disallowed are parallel to those of the Governor-General or His Majesty in respect of the Central Legislature.

Sec. 10 of the Act of 1919 [S. 80 A of the consolidating Act] lays down :—

“ The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province. ”

This wide margin of powers is subject only to one general exception, laid down in clause 4 of the same section, *viz* ;—

“ The local legislature of any province has not power to make any law affecting any Act of Parliament. ”

Subject to this exception, the provincial legislature can make, repeal or alter any law, made by itself or any other authority in British India, in so far as that law touches the province it governs. In some specified cases, the provincial Council must obtain the previous sanction of the Government of India before it can take into consideration measures of the specified class *e. g* :—

Measures authorising the imposition of a new tax, not exempted from this provision by rules made under this Act.

Measures affecting the public debt of India, or the Customs Duty, or any other duty for the time being in force, and imposed by the authority of the Governor-General in Council, for the general purposes of India.

Measures affecting the discipline or maintenance of the naval, military, or the Air forces of His Majesty.

Measures affecting the relations of the government with foreign powers, or states.

Measures regulating any central subject.

Measures regulating any provincial subject declared by rules under this Act to be subject in part or wholly to central legislation.

Measures affecting any power expressly reserved to the Governor-General-in-Council.

Measures altering or repealing any Act of the Indian legislature passed after the commencement of this Act, and declared by rules under this act to be unalterable by provincial legislation.

The effective limitations on the legislative powers of the new provincial councils do not, however, appear in these statutory restrictions. They are contained or concealed in those provisions which empower (Sec. 12) (51 A) the Governor to return a Bill passed by the local legislature for reconsideration with amendments desired by the Governor. This is most extraordinary, and amounts to making the governor completely master of the Council. Similarly, the emergency power granted by Sec. 13 (72 E) empowering a governor to certify that the passage of a bill refused by the provincial legislature is essential for the discharge of his duties, moves in the same direction, since the certification will practically amount to passing the Bill over the heads of the recalcitrant Council if necessary.

In the minor provinces, the Legislative council, if and when established, does not possess any of the powers of the Legislative council of a Governor's province. The latest example of such a council is that for Coorg, which is only a Chief Commissionership, and where the council, first created in 1924, will be convoked and consulted only in connection with the local legislative measures.

CHAPTER VI.

INDIAN FINANCE.

Two important departments of State, Finance and Army, which in every other constitution receive the closest attention of the authors of the constitution, have not been specifically dealt with by this Act. Provisions of a financial character have no doubt been inserted in the chapters dealing with the Secretary of State and the Council of India ; and reference to the Legislative procedure has been made in the provisions relating to the Indian Legislatures. It is necessary, however, for a proper study of the system of Indian Government, to have a more connected account of the theory and practice of Indian finance, and some slight acquaintance with the important heads of revenue and expenditure ; and this is, possibly, the most fitting place for inserting this account.

I. Financial Administration in India.

The general administration of finance in India, including the imposition of taxes, collection of revenue, and sanctioning of expenditure, was, before the changes of 1919, under the control of the Secretary of State in Council, and in the hands of the Government of India. The Executive Council of the Government of India has a member whose special duty it is to consider every question before the Government of India which has a financial aspect. Under him is the Accounts department, in the immediate charge of the Comptroller and Auditor-General, managing the civil accounts of the Supreme and, until 1919, of the Provincial Governments, as well. In this office all the accounts of the country used to be brought together and compiled. Subordinate to the Comptroller and Auditor-General are the Provincial Accountants General entrusted with

the task of keeping the accounts of Imperial receipts and expenditure within their province, as well as the accounts of local Governments. The accounts officers must see that no payment is made except upon proper authority, while another independent check is exercised by the Comptroller and Auditor-General through his own staff by means of test audits.

New expenditure may be authorised and made by the governing authorities in India within the limits laid down in the case both of the Imperial Government and of the Provincial Governments by standing rules approved by the Secretary of State in Council. Any expenditure, outside these rules, requires the specific sanction of the higher authority. Under the existing rules the sanction of the Secretary of State in Council is required for creating any new permanent appointment, which would ordinarily be held by a gazetted civil officer recruited in England, and for raising the pay of such an appointment; for creating any other new appointment with a salary of over Rs. 1,200 a month; for revising a permanent establishment involving an additional expenditure of over Rs. 50,000 a year.

II. The Budget System.

Indian finance has been regulated by the Budget system since 1860. This system consists in preparing estimates for the revenue and expenditure one year in advance, and suggesting means for meeting the discrepancy, if any, between the revenues and expenditure of the country. In India the financial year ends on the 31st March. Under the new rules, a Financial Statement is laid before the Imperial Legislative Assembly on or near the 1st of March to be discussed by that Assembly. The Budget proper, consisting of the estimates in their final form, as revised in the light of the latest information

available, and of the discussions on the preliminary estimates, must be presented to the legislature by the Finance Member on or before a given date.

The Indian Financial Statement and Budget include, besides the estimates for the coming year, the Revised Estimates of the year about to close, and the "actuals" or closed accounts of the previous year. There is almost always a considerable difference in the total estimates, as well as in the estimates for specific heads in the Budget, in the revised estimates, and in the actuals. This is due to the fact that the principal heads of revenue in India, depending as they do upon weather conditions, are proverbially uncertain; and the spending departments, too, are seldom able to keep rigidly to the exact limit set to their operations by the Finance Department. The ideal of a Financial Minister is to try and make his budget estimates correspond as nearly as possible to the accounts; but for the reason given above this ideal is difficult to realise in India. Hence we have the constant phenomena of wide differences between the estimates and actuals, unexpected and heavy surpluses and deficits, and the consequent desire of the Finance Minister to make very cautious estimates. This is, of course, at variance with the sound maxim that no more revenue should be raised than is exactly necessary for expenditure; but it cannot be avoided by the Government of India, who have a fairly heavy debt in proportion to their revenues, and who must therefore maintain their credit, if necessary, by budgetting deliberately for a surplus.

III The Power of the Purse in India.

The sole right of the Legislature to vote supplies for the various departments of the Government is known as the Power of the Purse. This power is the key-stone of the whole arch of British liberty. Any cabinet which proposes to carry on the government of the country in defiance of the wishes of Parliament would be soon brought to heel by Parliament refusing supplies. People would not pay a penny in taxation, unless

their Parliament has sanctioned such exaction every year. Hence in every department of administration the executive must conform to the wishes of the Legislative.

The Indian Councils have no such power of the purse. It is true that since the reforms of 1909 they were allowed to discuss the financial proposals of the Government, and even to make some recommendations. But the Government were not bound to accept the recommendations made by their Councils. The Council as such had no right to vote or veto a budget. The entire power of the purse, from the preparation of the Budget to its final carrying out, rested with the Executive. And, consequently, the control of the Council on the departments of Executive Government was imaginary.

The Act of 1919 has made very considerable changes in this position. In the case of the Government of India, under Sec. 25 of the Act, the estimated annual expenditure and revenue of the supreme Government must be prepared and submitted each year to both the chambers of the Indian Legislature. Disbursement of the revenue thus estimated cannot be made except on the recommendation of the Governor-General. The Legislative Assembly is debarred from voting or discussing grants on the following subjects :—

Interest and Sinking Fund charges on Loans.

Expenditure prescribed by any Law.

Salaries or pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State.

Salaries of Chief Commissioners and Judicial Commissioners.

Expenditure classified by the orders of the Governor-General as Ecclesiastical, Political or Defence.

In these two matters the Act of 1919 tries to reproduce an unwritten convention of the British constitution, whereunder no expenditure can be proposed except on the initiative of a

Minister of the Crown, and where a few heads of recurring expenditure, like the salaries of the Judiciary, are placed outside the annual vote of the Parliament under what are known as the Consolidated Fund Services. The first convention is salutary, if we assume that the freedom of proposing grants by members of the legislature will degenerate into a loot of public resources for the benefit of individual fads or constituencies. There is nothing, however, to be said against reserving the power of initiation in the government, provided it is a responsible government. The second convention of non-voteable services reserves the most important portion of the Indian public expenditure to the discretion of the executive, and thus takes away from the constitutional advance made by the Act of 1919. The expenditure for Defence and Interest on loans constitute three-fourths of the total Indian Budget, not to mention that grave questions of national economy would be excluded from the Legislature's discussion by the removal of these items from the cognisance of the Legislature. The exclusion of the salaries and emoluments of the Civil Service is probably dictated by a desire to placate the most important body of public servants whose alienation might, it was feared, jeopardise the success of the Reforms. But the concession of such extraordinary position was unnecessary, in view of the facilities provided for retirement to those officers of the Government of India, who are unwilling to work under the reformed constitution.

The Legislative Assembly is, in the theory of the Act, free to vote or refuse the grants under those items which are not specifically excluded from its cognisance. But if it refuses any grant which the Governor-General *certifies* is essential for the discharge of his duties or responsibilities, the Governor-General is by law entitled, without further ceremony, to treat that refused grant as having been sanctioned, and carry on the expenditure as he likes. And this is in addition to the special power reserved to him in extraordinary emergencies to authorise expenditure as may in his opinion be necessary for the safety or tranquillity of British India or any part thereof.

The powers of the Provincial Legislatures proceed on the same basis. Ostensibly they are given the right to vote the provincial Budget, and, therefore, by implication, to withhold supplies. But in reality, in the case of the Reserved Subjects, if the local Council refuses a grant, and the Governor of the province certifies that the grant is essential for the discharge of his responsibilities, he is entitled to treat the grant as having been passed despite the refusal, and to incur the expenditure over the head of his Council. And this is in addition to the emergency power in special cases provided by Sec. 11 of the reforming Act.

**A.—Statement of the Revenue of the Central Government,
in India and in England.**

HEADS OF REVENUE.	Budget 1923-24.	Increase (+) Decrease (—) as compared with Budget, 1922-23.	Increase (+) Decrease (—) as compared with Revised 1922-23.
Principal Heads of Revenue—	Rs.	Rs.	Rs.
I.—Customs ...	45,09,41,000	—32,43,000	2,79,38,000
II.—Taxes on Income ...	19,04,64,000	—3,06,75,000	35,33,000
III.—Salt ...	11,75,00,000	+4,88,97,000	4,57,16,000
IV.—Opium ...	3,93,12,000	+83,82,000	—5,56,000
V.—Land Revenue ...	43,94,000	+1,000	13,000
VI.—Excise ...	52,58,000	—3,64,000	91,000
VII.—Stamps—			
A.—Non-judicial ...	9,66,000	—42,000	51,000
B.—Judicial ...	16,15,000	+1,94,000	48,000
VIII.—Forest ...	34,57,000	+12,89,000	8,41,000
IX.—Registration ...	1,62,000	—6,000	11,000
X.—Tributes from Indian States	86,45,000	—1,60,000	—2,95,000
TOTAL...	82,27,14,000	+2,42,73,000	7,73,91,000
Railways—			
XI.—State Railways—			
Gross Receipts ...	95,57,24,000	—4,00,02,000	3,49,98,000
Deduct—Working Expenses	66,51,50,000	+1,54,24,000	—17,65,000
Surplus Profits paid to companies	98,77,000	—38,77,000	—30,70,000
Net Receipts	28,06,97,000	—2,84,55,000	3,01,63,000
XII.—Subsidised Companies ...	19,61,000	+19,000	—6,36,000
TOTAL...	28,26,58,000	—2,84,36,000	2,95,27,000
Irrigation, etc.—			
XIII.—Works for which no Capital accounts are kept...	10,59,000	+3,41,000	39,000
XIV.—Works for which no Capital accounts are kept...	4,000	...	—2,000
TOTAL...	10,63,000	+3,41,000	37,000
Posts & Telegraphs—			
XV.—Gross Receipts ...	10,71,83,000	—43,71,000	47,98,000
Deduct—Working Expenses ...	8,68,89,000	+71,87,000	64,88,000
Net Receipts...	2,03,44,000	+28,16,000	1,12,86,000
Interest Receipts—			
XVI.—Interest ...	2,50,96,000	+1,66,65,000	1,46,85,000
Carried over...	1,15,18,75,000	+1,56,59,000	13,29,26,000

**A.—Statement of the Revenue of the Central Government,
in India and in England—Continued.**

HEADS OF REVENUE.	Budget 1923-24.	Increase (+) Decrease (—) as compared with Budget 1922-23.	Increase (+) Decrease (—) as compared with Revised. 1922-23.
Brought forward...	1,15,18,75,000	+1,56,59,000	+13,29,26,000
Civil Administration—			
XVII.—Administration of Justice	3,84,000	+35,000	+25,000
XVIII.—Jails & convict Settlements	9,09,000	—2,02,000	+85,000
XIX.—Police	1,64,000	—11,99,000	+1,000
XX.—Ports and Pilotage	24,51,000	+30,000	—2,73,000
XXI.—Education	1,33,000	+16,000	+6,000
XXII.—Medical	1,07,000	+57,000	+55,000
XXIII.—Public Health	1,22,000	—1,85,000	—3,000
XXIV.—Agriculture	5,01,000	—1,79,000	+22,000
XXV.—Industries	...	—2,00,000	—2,000
XXVI.—Miscellaneous Departments	14,37,000	—6,14,000	+1,26,000
TOTAL...	62,08,000	—24,41,000	+5,88,000
Currency, Mint and Ex- change—			
XXVII.—Currency	2,64,35,000	—38,78,000	—71,78,000
XXVIII.—Mint	4,91,000	—14,27,000	—12,16,000
TOTAL...	2,69,26,000	—53,05,000	—83,84,000
Civil Works—			
XXX.—Civil works	10,69,000	—23,000	—56,000
Miscellaneous—			
XXXIII.—Receipts in aid of Su- perannuation	25,22,000	+2,21,000	+8,000
XXXIV.—Stationery and Printing	11,77,000	—5,64,000	—3,57,000
XXXV.—Miscellaneous	11,35,000	—14,34,000	—15,79,000
TOTAL...	48,34,000	—17,77,000	—19,28,000
Military Receipts—			
XXXVI.—Army— Effective	2,15,74,000	—2,78,42,000	—1,78,84,000
Non-effective	27,91,000	+3,46,000	—4,27,000
XXXVII.—Marine	2,43,65,000	—2,74,96,000	—1,83,11,000
XXXVIII.—Military Works	21,29,000	+1,06,000	—14,56,000
	16,29,000	+99,000	—22,11,000
TOTAL...	2,81,23,000	—2,72,91,000	—2,19,78,000

**A.—Statement of the Revenue of the Central Government,
in India and in England.—Continued.**

HEADS OF REVENUE.	Budget 1923-24.	Increase (+) Decrease (-) as compared with Budget, 1922-23.	Increase (+) Decrease (-) as compared with Revised 1922-23.
Contributions & Assignments to the Central Government by Provincial Governments—			
XXXIX.—Contributions and Assignments to the Central Government by Provincial Governments	9,20,00,000	...	...
XI.—Miscellaneous adjustments between the Central & Provincial Governments	1,36,000	+71,000	-14,000
TOTAL...	9,21,36,000	+71,000	-14,000
TOTAL REVENUE...	1,31,11,71,000	-2,11,17,000	+10,11,54,000

B.—Statement of the Expenditure charged to the Revenue of the Central Government in India and in England.

HEADS OF EXPENDITURE.	Budget. 1923-24.	DISTRIBUTION OF TOTAL BETWEEN.	
		Voted.	Non-voted.
Direct Demands on the Revenues—	Rs.	Rs.	Rs.
1.—Customs ...	77,19,000	67,22,000	9,97,000
2.—Taxes on income ...	63,79,000	60,07,000	3,72,000
3.—Salt ..	1,55,34,000	1,14,97,000	40,37,000
4.—Opium ...	1,89,31,000	1,87,76,000	1,55,000
5.—Land Revenue ...	11,93,000	10,86,000	1,07,000
6.—Excise ...	2,74,000	1,52,000	1,22,000
7.—Stamps—			
A.—Non-judicial	2,67,000	2,89,000	21,000
B.—Judicial	43,000		
8.—Forests ...	47,06,000	40,72,000	6,34,000
9.—Registration ...	42,000	38,000	4,000
TOTAL...	5,50,88,000	4,86,39,000	64,49,000
Railway Revenue Account—			
10.—State Railways:			
Interest on Debt ...	18,77,90,000	...	18,77,90,000
Interest on Capital contributed by Companies ...	3,22,30,000	...	3,22,30,000
Annuities in purchase of Railways ...	5,03,62,000	...	5,03,62,000
Sinking Funds ...	49,10,000	...	49,10,000
11.—Subsidised Companies ...	25,90,000	25,90,000	...
12.—Miscellaneous Railway Expenditure ...	12,50,000	5,69,000	6,81,000
TOTAL...	27,91,32,000	31,59,000	27,59,73,000
Irrigation, etc., Revenue Account—			
14.—Works for which Capital accounts are kept—			
Interest on Debt ...	10,88,000	...	10,88,000
15.—Other Revenue Expenditure	1,16,000	1,16,000	...
TOTAL...	12,04,000	1,16,000	10,88,000
Irrigation, etc., Capital Account (charged to Revenue)—			
16.—Construction of Irrigation, etc., Works—Financed from Ordinary Revenues ...	2,16,000	2,16,000	...
Posts and Telegraphs Revenue Account—			
17.—Posts and Telegraphs—			
Interest on Debt ...	68,28,000	...	68,28,000
Miscellaneous Expenditure ...	—8,55,000	—8,55,000	..

**B.--Statement of the Expenditure charged to the Revenue
of the Central Government in India and in England.**

HEADS OF EXPENDITURE.	Budget. 1923-24.	DISTRIBUTION OF TOTAL BETWEEN.	
		Voted.	Non-voted.
Posts and Telegraphs Capital Account (charged to Revenue)—	Rs.	Rs.	Rs.
18.—Capital outlay on Posts and Telegraphs— Indo-European Telegraph Department ...	—3,19,000	—3,19,000	...
Debt Services—			
19.—Interest on Ordinary Debt ...	35,36,73,000	...	...
Deduct—Amount chargeable to—			
Railways ...	18,77,90,000	...	...
Irrigation ...	10,88,000	...	...
Posts and Telegraphs ...	68,28,000	...	...
Provincial Governments ...	4,00,15,000	...	...
Remainder chargeable to ordinary Debt—	11,79,52,000	22,000	11,79,30,000
20.—Interest on other Obligations	3,21,61,000	3,21,07,000	54,000
21.—Sinking Funds ...	2,20,44,000	...	2,20,44,000
TOTAL...	17,21,57,000	3,21,29,000	14,00,28,000
Civil Administration—			
22.—General Administration—			
A—Heads of Provinces (in- cluding Governor General and Executive Councils)...	24,35,000		
B—Legislative Bodies ...	9,18,000		
C—Secretariat and head quar- ters establishment ...	79,12,000	1,10,16,000	64,46,000
D—Commissioners ...	14,000		
E—Direct Administration ...	16,69,000		
F—Home Administration- etc.	45,14,000		
23.—Audit ...	79,40,000	70,72,000	8,68,000
24.—Administration of Justice ...	12,04,000	7,75,000	4,29,000
25.—Jails and Convict Settlements	43,89,000	38,73,000	2,16,000
26.—Police ...	89,48,000	79,56,000	9,92,000
27.—Ports and Pilotage ...	25,67,000	11,29,000	14,38,000
28.—Ecclesiastical ...	33,27,000	...	33,27,000
29.—Political ...	3,31,36,000	...	3,31,36,000
30.—Scientific Departments ...	1,02,60,000	81,61,000	20,99,000
31.—Education ...	34,86,000	28,04,000	6,82,000
32.—Medical ...	30,62,000	20,24,000	10,38,000
33.—Public Health ...	21,95,000	10,94,000	11,01,000
34.—Agriculture ...	21,66,000	16,79,000	4,87,000
35.—Industries ...	76,000	55,000	21,000
36.—Aviation ...	44,000	29,000	15,000
37.—Miscellaneous Department ...	46,78,000	43,35,000	3,43,000
TOTAL...	10,46,35,000	5,20,02,000	5,26,33,000

**B.—Statement of the Expenditure charged to the Revenue
of the Central Government in India and in England.**

HEADS OF EXPENDITURE.	Budget. 1923-24.	DISTRIBUTION OF TOTAL BETWEEN.	
		Voted.	Non-voted.
Currency, Mint and Exchange—	Rs.	Rs.	Rs.
38.—Currency ...	94,89,000	92,89,000	2,00,000
39.—Mint ...	18,56,000	14,64,000	1,92,000
40.—Exchange ...	...	...	...
TOTAL...	1,13,45,000	1,09,53,000	3,92,000
Civil Works—			
41.—Civil Works ...	1,87,63,000	1,27,07,000	60,56,000
Miscellaneous—			
43.—Famine Relief and Insurance—			
A—Famine Relief ...	5,000	5,000	...
44.—Territorial and Political Pensions ...	29,86,000	...	29,86,000
45.—Superannuation Allowances and Pensions ...	3,47,62,000	50,37,000	2,97,25,000
46.—Stationery and Printing ...	72,57,000	72,06,000	51,000
47.—Miscellaneous ...	71,03,000	42,22,000	28,81,000
TOTAL...	5,21,13,000	1,64,70,000	3,56,43,000
Lump allowance for further re- trenchment in Civil expendi- ture (including Railways) ...	—4,00,00,000	—4,00,00,000	...
Military Services—			
48.—Army ...			
Effective ...	50,56,75,000	...	50,56,75,000
Non-effective ...	9,04,57,000	...	9,04,57,000
	59,61,32,000	...	59,61,32,000
49.—Marine ...	96,36,000	...	96,36,000
50.—Military Works ...	4,23,55,000	...	4,23,55,000
TOTAL...	64,81,23,000	...	64,81,23,000
Contributions & Assign- ments to the Central Government by Provin- cial Governments—			
52.—Miscellaneous adjustments between the Central and Provincial Governments ...	3,62,000	3,62,000	...
TOTAL EXPENDITURE CHARGED			

IV A Brief Review of the Heads of Indian Revenue and Expenditure.

Of these the Land Revenue, accounting for nearly $\frac{1}{4}$ of the total revenue, and being the largest single item, next after the Customs Revenue, is fixed by settlements, which are, generally speaking, fixed permanently or subject to periodical revisions. The receipts under this head ought not, therefore, to fluctuate very much from year to year; but the uncertainty of yield, which depends very much on the character of the weather, and the consequent desire of the Government not to be very rigid in collecting this revenue, account for all variations. In a year of drought Government might have remitted, partially or totally, their revenue demand from the afflicted district, in which case the figures for that year would show a considerable decline. Or they might have only postponed their demand, in which case the figures for the following year would show a great improvement owing to the payment of arrears. On the whole the receipts under this head show a steady upward tendency owing to the value of the "assets" having increased with the extension in cultivation, growth in population, rise in prices and development in trade. This head is now wholly Provincial.

The receipts shown under the head of Opium are those arising from the sale of opium for export; the revenue derived from opium consumed in India being credited under excise. Opium revenue is derived from a government monopoly. In normal times, before 1908, the revenue was subject to great fluctuations owing to variations in prices and changes in weather. Since 1908, following the Anglo-Chinese treaty in this respect, the Government of India have undertaken progressively to reduce their exports to China, and this revenue therefore is expected to fall very low in the near future. This head is wholly Imperial.

The Salt revenue was, it is said, inherited by the British Government from native rule along with other transit dues.

These transit dues were abolished, but the salt duty was consolidated and raised. Broadly speaking, one-half of the salt produced in India is manufactured by Government agency, while the rest is prepared under Government license. The North India Salt Department, a branch of the Finance Department, controls the public manufactories in the Panjab and Rajputana, while in Madras and Bombay they are under the supervision of the local Governments. For the salt raised in Native States there are special treaties, permitting, for a commuted payment to the states concerned, free movement of salt. The duty on indigenous salt was Rs. 2-8 between 1888-1903 per maund. It was reduced to Rs. 2 in 1903, to 1-8 in 1905, and to Re. 1 in 1907. Owing to the exigencies of the present war the duty was raised to Rs. 1-4 in 1916. The receipts under this head include the revenue derived from imported salt, and are taken wholly by the central Government. The duty was doubled in 1923.

The Excise revenue in British India is derived from the manufacture and sale of intoxicating liquors, hemp, drugs, toddy, and opium, and cotton duties. The revenue is collected under provincial laws which have accepted the general principle of disposing of the right to manufacture spirit for supplying a district by tender. The rate of still-head duty and the supply price to be charged are fixed in the contract, while the right to sell is separately disposed of. Foreign liquor is subject to an import duty at the tariff rates, and the revenue therefrom is included under the customs revenue. This head is wholly Provincial, except as regards the Cotton Excise Duty.

The Stamp revenue is derived from two kinds of stamps:—Judicial or Court Fee Stamps, and non-judicial or Revenue stamps. The judicial stamp revenue constitutes more than $\frac{3}{4}$ of the total revenue; it is considered a kind of *quid pro quo*, rather than a tax properly so called. The revenue stamps are chiefly those charged on commercial documents. This revenue is split up between the Central and Provincial Governments.

The revenue under Customs is derived from duties charged on imported and exported articles. Owing to financial stringency the customs schedule was completely recast in 1916-17, and frequently altered thereafter. The customs department is administered by an Imperial Customs Service, responsible to the Imperial Government through the department of Commerce and Industry, and the receipts belong entirely to the central government. They now amount to Rs. 45 crores.

Among the other heads of taxes may be mentioned the Income Tax which is the chief of the assessed taxes. Like the Customs, this head also was considerably altered in 1916. The present Income Tax is levied on non-agricultural incomes of over Rs. 2,000 a year. The receipts under this head are for the Imperial Government, subject to a slight return to the provincial governments.

Among the remaining heads of revenue, receipts under Interest are derived from loans made to local Governments or Native States or to local Boards and Municipalities. The Posts and Telegraphs are another instance of a public monopoly in India, reserved, with the railways, for the central Government.

The revenue derived from Public Works is given in the table under three heads : Railways (central); Irrigation, and other public works, which are now provincialised. The Railways form an Imperial department under a Railway Commission, represented in the Imperial Council by the member in charge of the Commerce and Industries Department.

The revenue from Railways is derived from : (a) the share of surplus profits falling to the State under the agreements with the railway companies, and (b) the direct profits of the State from lines owned or acquired and conducted by the State.

The revenue derived from Irrigation works is collected, generally speaking, along with the land revenue, and in the shape of an enhanced land revenue demand. It is also collected in some parts in the shape of specific rates levied on the

owners or occupiers of the land benefitting by irrigation works. Unlike the railways, the major productive Irrigation works have all been constructed and worked directly by the State, and they have invariably proved profitable. A few Irrigation works, however, have been constructed with a view to protection rather than to profit. But on the whole the public Irrigation works have never caused a loss to the State.

In all these heads of revenue, changes can be made by the Indian Legislature, though the Government are not bound to submit their proposals for financial changes to the Legislative Assembly and abide by the vote of the Assembly thereon. In practice, however, even before the changes of 1909, the Government carried out each proposed change by means of a special legislative enactment.

V A Brief Review of the principal Heads of Public Expenditure.

Among the various heads of expenditure the most noticeable is the head of Interest on Debt, which amounted to Rs. 40,78,78,000 in 1923-24. The debt of India has arisen from two causes: (a) There was a huge legacy of debt left to the Crown by the East India Company in 1858, to which was added the value of the India Stock in that year; so that the total debt amounted to Rs. 63'555 crores in 1859-60. This was almost wholly non-productive debt. In the years that followed, the rupee debt was gradually increased owing to wars, such as the 2nd Afghan war or the 3rd Burmese war, or the present European war, and to famines, such as those of 1878-79 and 1899-1900. (b) There was the need of fresh borrowing every year for the construction of productive public works. Under this head there is hardly any limit to the public borrowing in India, except the one set by the available supply of capital in the London and the Indian money-markets. Out of the total interest charge of Rs. 40,78,78,000

in 1923-24, Railways alone absorbed Rs. 18,77,90,000, while Irrigation and other provincial debt accounted for Rs. 4,19,03,000, while the Interest on ordinary, unproductive debt, together with the Sinking Fund charges, amounted, to Rs. 17,21,57,000.

The direct demands on Revenue include all costs of collection and production. This item has been steadily on the increase. The cost of collection of the land revenue constitutes over 60 p. c. of the total ; the charges under that head include the cost of district administration, of the departments of land records, and of survey and settlement operations.

The expenses of the civil departments have been continuously growing. They include charges for General Administration, Courts of Law, Jails, Police, Ports and pilotage, Education, Ecclesiastical, Medical, Political, Scientific and other departments. The increase is most conspicuous under Education, Police, Medical and Scientific departments. The charges for general administration represent the cost of the whole civil administration down to the grade of commissioners of divisions. They include also the charges on account of the India Office, the Viceroy, the Governors, Lieutenant Governors and Councils in India. Such charges as those for the Coronation Durbar also come under this head. The Scientific and minor departments include the Survey of India, the Botanical and Geological Surveys, the Agriculture and Veterinary departments, Observatories, Inspectorate of Mines and Factories and miscellaneous departments.

The Miscellaneous Civil Charges include territorial and political pensions, civil furlough and absentee allowances, superannuation allowances and pensions, stationery and printing, and miscellaneous. Of these the first head is on the decline, and the superannuation allowances are on the increase.

The charges for Posts and Telegraphs, Railways and Irrigation, Roads and Buildings, Mint &c. are incurred in connection with the working of these great commercial undertakings.

The Famine Relief and Insurance item dates from 1878. Prior to that date each famine was met as it occurred, and beyond that no regular machinery was provided. The experience of 1878 convinced the Government that the cost of famine relief should be treated as an ordinary charge on the revenue ; and for that purpose a sum of $1\frac{1}{2}$ crores of Rupees was to be set aside every year. This sum is applied first to the direct relief of famine ; secondly to the construction and maintenance of " protective " railways and irrigation works ; thirdly to the construction of " productive " public works which would otherwise necessitate additional borrowing. The amount used under the last-mentioned purpose is shown under the head of Reduction or Avoidance of debt. Combating famine is primarily within the sphere of local Governments ; but since 1907 the fixed assignments to Bombay, the Central Provinces, United Provinces, Bengal and Madras were increased by £ 250,000. This total is debited to the provincial revenues each year under the head of Reduction or Avoidance of debt, and the share of each province is entered to its credit with the Imperial Government. The provinces, thus accumulate a reserve of credit which may be drawn upon in the event of famine. The charges then incurred are entered as Imperial expenditure. Since 1920, Famine Relief is made a wholly provincial charge, subject to rules which are summarised later on.

VI. Home Charges.

Another peculiarity of Indian Finance is that not the whole of the expenditure is incurred in India. A considerable portion, amounting to nearly £ 40 million, is spent in England, and is collectively described as the Home Charges. They include:—interest and management of the ordinary debt, interest and annuities on irrigation and railways account, payments in connection with civil departments in India, India

Office charges, Army and Marine charges, stores, furlough allowances, and pensions and gratuities. Of these, interest accounts for over £ 10 million; India Office and Civil department charges for £ 500,000; Army and Marine charges over Rs. 15 crores; and stores a varying item; furlough allowances over a million, and pensions and gratuities for nearly £ 5 millions. Indian public opinion regards this as a drain from India for the benefit of England. The defenders of the Government of India point out that (a) a good proportion of the Home Charges is used for paying the interest on debt, the greater portion of the money borrowed being used for productive purposes. Moreover the terms and conditions obtained by the Government of India in the London market are much easier than would be possible if India were an independent state. And such borrowing would be indispensable if India is to have all those means of modern material development, which many other countries, like Japan or the United States, have to bring about by borrowed money. To all these arguments Indian publicists retort that not the whole of the Indian public debt has been incurred for productive purposes, nor were the objects, assumed to be productive, equally or immediately productive. Besides, even if India had to borrow for all these material improvements, there is no ground for assuming that she borrows under better conditions under British dominion than she would otherwise, as the much more unsettled state of South American republics does not preclude them from borrowing in the same London market at pretty nearly the same terms as India. (b) It is further argued by those who see no drain in the Home Charges that the item of stores should not be included, since in this instance there is a tangible return in goods for India's money. Again (c) the item of pensions, gratuities and other charges of the kind is incurred for services rendered in the past, or being rendered now, to the Indian peoples by the recipients of these allowances, and so here also it is unfair to describe the charge as a drain. To this the Indian publicists reply that the services of public servants are remunerated in India, admittedly the

poorest country in the world, at a much higher rate than in any other country ; that in those services the sons and daughters of India obtain a very slender proportion ; and that the whole amount saved by the European officials in India is taken away from India on their retirement, and may, therefore, quite reasonably be regarded as a drain. This subject, however, is too complicated, and involves too many considerations to allow us to do anything more than to summarise the arguments on either side in this work.

VII. The Decentralisation of Finance.

The third peculiarity of Indian finance is the division of financial authority between the Imperial and the Provincial Governments.

Originally, under the Charter Act of 1833, a system of Financial administration was established, by which the revenues of the whole of India, although received in the treasuries and sub-treasuries of the various provinces, were all credited to the single account of the Government of India, which distributed all the funds needed for the public services throughout India. "The Supreme Government" it has been said "controlled the smallest details of every branch of the expenditure: its authority was required for the employment of every person who was paid with public money, however small his salary, and its sanction was necessary for the grant of funds even for purely local works of improvement, for every local road, for every building however insignificant. The provincial Governments had no liberty and no incentive to economy. The distribution of the public income degenerated into a scramble in which the most violent—not the most reasonable—had the advantage".

This system was modified by Lord Mayo. The main principle introduced by that Viceroy was, to make over to the

provincial Governments a certain income by which they must regulate their expenditure, and to leave to them, under certain general conditions, the responsibility of managing their own local affairs. According to this principle the following heads of revenue and expenditure were made over to the local Governments: Jails, Registration, Police, Education, Medical service, Printing, Roads, Civil Buildings, and Miscellaneous public improvements. These were to be supplemented by a fixed annual Imperial grant varying according to the needs of each province. In case of a deficit the local Governments were to reduce their expenses or meet it by imposing taxation.

The system thus modified was improved under Lord Lytton, slightly altered under Lord Ripon, revised under Lord Lansdowne, and made semi-permanent under Lord Curzon. The main principles of this scheme of gradual decentralisation of finance had been confirmed in the course of a generation, and were summarised as follows by the Financial Secretary to the Government of India for the Royal Commission on Decentralisation:—

- (a) The Imperial Government retained certain administrative services which were thought inexpedient to be handed over to the provincial Governments. They also reserved the revenues from such services, together with such a share of the other public revenues, as would meet the expenditure falling on them.
- (b) The remaining administrative services were made over to the provincial Governments. Each local Government was assured an income making it independent of the needs of the Government of India, and at the same time able to meet its normal needs.
- (c) This income was given in the shape of a defined share of the revenues collected by the Local Government in order to allow the resources of the local governments to expand with their needs.

The Royal Commission on Decentralisation summarised the existing system in 1909 as follows :—

(1) The settlements had been declared to be quasi-permanent. The Government of India reserved the right of revision ; but they had promised to exercise that power only when the variations from the initial relative standards of revenue and expenditure were, over a substantial term of years, so great, as to result in unfairness either to the province itself or to the Government of India ; or in the event of the Government of India being confronted with the alternatives of either imposing general taxation or seeking assistance from the provinces.

(2) The distribution of revenue between the provincial and central governments was made, except on occasions of grave emergency, with direct reference not to the needs of the central government, but to the outlay which each province might reasonably claim to incur upon services which it administered..

(3) The third feature of the system was the method by which the revenue accruing from the various sources was distributed. The residue which was available for Imperial purposes was taken in the shape of a fixed fractional share in a few of the main heads of revenue which were known as the "divided heads." As, however, the distribution of these heads could never be so adjusted as to yield to a province, when added to the revenue from the purely provincial heads, the exact sum necessary to meet provincial charges, equilibrium was effected by means of fixed cash assignments—a deficiency being remedied by an assignment to provincial revenues from the Imperial share of the land revenue, and an excess by the reverse process.

In 1912 the settlements were made permanent, and Provincial Finance in India came to be governed by rules framed in that year. The settlements with all the provinces were revised, and subject to the contingency of providing

against famine, local Governments were informed that certain growing heads of revenue were placed once for all at their disposal from which to meet the future needs of their province. The following rules were among the most important.

(1) The settlements being permanent were not subject to revision. In the case of a serious famine the Government of India might render special assistance to the afflicted province. On the other hand provinces might be called upon to aid the Government of India in the case of a serious embarrassment.

(2) Whenever the fixed assignment to a province became unduly high, it would, as a rule, be converted wholly or partially into a share of growing revenue.

(3) Whenever the Government of India had a surplus which was not required for remission of taxation or reduction of debt, they made special allotments to the provinces and declared the purpose for which such special grant was to be used. But such grants could not be made the occasion of a greater interference by the Supreme Government in the local concerns than before, nor should the grants be made without any regard to the wishes of the local Government, or be made applicable in all the provinces to the same purpose.

(4) The local Governments were not allowed to budget for deficits, unless the excess expenditure was due to exceptional and non-recurring causes. And if the deficit resulted in the reduction of Provincial balances below the prescribed minimum, arrangements should be forthwith made to replenish the deficit. If a local Government exhausted its own balance, and was permitted to overdraw upon the general balances, the overdraft was regarded as a short loan, bearing interest and repayable in such modes as the central Government might direct.

(5) The corrections by the Government of India thereafter were limited to the proposed totals of revenue and expenditure, and divided heads of revenue.

The same resolution which laid down these rules also considered the two further questions of the advisability of the provincial Governments imposing and altering taxes, and that of borrowing on their own credit. As regards the first, the local Governments argued that the conditions of economic development in all provinces are not identical; and therefore, the uniform taxation levied by the central Government results in unfairness. The Imperial Government admitted that, in a vast country of varying conditions, imperial taxation must of necessity be limited in its range, since very few taxes are suitable for the whole Empire; that the incidence of an imperial impost might vary from province to province; that the right given to the provinces to tax their own citizens might balance such inequalities, and allow of tax experiments on a small scale which would be impolitic on a large scale. But all these were theoretical considerations only. In the absence of any practical scheme, the Government of India did not see fit to concede the right beyond admitting that the financial autonomy of provincial Governments must carry with it—whenever it came—the right to impose taxation. As regards the raising of loans by Local Governments, they are not permitted to raise them in open market, for they would compete with the Imperial loans. Besides it is considered undesirable to increase the unproductive debt of India. They may, however, have short term loans from Imperial revenues to meet the cost of non-productive works of obvious utility which they cannot finance from their own revenues.

Having already considered the question of provincial autonomy, it is unnecessary to discuss in detail the financial policy of the Government of India in relation to the provinces. Suffice it to say that under the present circumstances it would be undesirable to make the provinces financially independent of the Government of India; that Government cannot concede the right of taxation or of borrowing without impairing its own supremacy, and no financial independence for the provinces be complete without the right to tax and to borrow.

VIII Financial Divisions under the Changes of 1919.

The basic idea of the reforms of 1919 being to secure the autonomy of the provinces, and finance being the keystone of that autonomy, the entire financial arrangement was revised and recast. The idea of a centralised financial system, with a common purse held by the Government of India, and administered under a system of *ad hoc* division by the provincial authorities, has been replaced by *complete separation of financial powers and resources*, though all public monies are still paid into a common account. Generally speaking all the old divided heads are abolished, and the provinces assigned the revenue from Land, Excise, Judicial Stamps, and Forests in some cases, with a rebate of 3 pies on every rupee assessed for income tax in each province.

The following subjects of taxation are open to Provincial Councils, without previous sanction of the Governor-General, for new taxation.

- (1) A Tax on land put to uses other than agricultural.
- (2) „ „ „ succession or survivorship in a joint family.
- (3) „ „ „ betting or gambling permitted by law.
- (4) „ „ „ Advertisements.
- (5) „ „ „ Entertainments.
- (6) „ „ „ any specified luxury.
- (7) „ „ „ a Registration fee.
- (8) Stamp Duties other than those fixed by the Government of India.

Of these the Amusements tax has been tried in all important provinces. The income sought to be derived from advertisements on telegraph forms for the central government is in no way an infringement of the rights of the local governments, which, presumably, are at liberty to tax even the advertisement income of the central government.

The provincial government enjoys full control over these allocated heads, subject to the first charge of the contribution payable by the provincial governments to the Imperial Indian Government under the scheme of division. The following table shows the amount payable by each province, Bihar and Orissa being the only exception on account of the comparative exiguousness and inelasticity of its revenues.

Provincial Contributions in Lakhs of Rupees.

Madras	348	These contributions are obviously unequal; and as such give rise to much heartburning and opposition in the provinces. Madras thinks itself ill-treated because it has to pay more than five times the contribution of Bengal, and Bombay because the most important source of revenue raised in the Presidency has been reserved for their own purposes by the Government of India. The contributions have to be made, however, because the original
Bombay	58	
Bengal	63	
U. P.	240	
Punjab	175	
Burma	64	
C. P.	22	scheme of division assumed a standard irreducible scale
Assam	15	of expenditure by the Central as well as the Provincial governments, and then proceeded to assign sources of revenues to the

authorities concerned, resulting in a deficit of 983 lakhs of rupees to the Central Government. Besides, a special emergency power is reserved to the Government of India to demand from any province a payment in addition to its contribution to meet a special emergency, provided the demand is approved of and sanctioned by the Secretary of State. The provinces are made to bear, besides their old items of expenditure, the charges for Famine Relief and protective Irrigation works, though the Indian Government is not wholly exempt from liability for famine.

The Provincial Councils are further given power to originate additional taxation to meet some new departures in pro-

vincial development, as well as powers of borrowing on the security of the provincial revenues.

The borrowing powers of the Provincial Governments are limited by rules the most important of which says:—

A local Government may raise loans on the security of the revenues allocated to it for any of the following purposes, namely:—

- (a) to meet capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during construction and equipment) of any work or permanent asset of a material character in connection with a project of lasting public utility, provided that
 - (i) the proposed expenditure is so large that it cannot reasonably be met from current revenues; and
 - (ii) if the project appears to the Governor-General in Council unlikely to yield a return of not less than such percentage as he may from time to time by order prescribe, arrangements are made for the amortisation of the debt;
- (b) to meet any classes of expenditure on irrigation which have under rules in force before the passing of the Act been met from loan funds;
- (c) for the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity;
- (d) for the financing of the Provincial Loan Account; and
- (e) for the repayment or consolidation of loans raised in accordance with these rules or the repayment of advances made by the Governor-General in Council.

"The Committee have recast Rules 2 and 3 of these rules in order

- (1) to provide a more elastic specification of the purposes for which loans may be raised,
- (2) to differentiate loans raised in India from those raised in the United Kingdom for the purpose of prescribing the sanctioning authority, and
- (3) to enable the Government of India or the Secretary of State, as the case may be, to retain control over the effective rate of interest to be charged and the amount and form of the issue.

The reason which influenced the Committee in deciding upon these last two provisions is that in the case of loans to be raised in India, the retention of control over provincial borrowing is, in their view, essential in the interests not only of the Central Government, but also of the provinces themselves (*e.g.* to prevent unrestricted provincial competition). Similar considerations are applicable to the sterling borrowing operations of the provinces; and, apart from this, the Committee consider that the experience of the Secretary of State in Council in the London market is such that the chances of success of provincial loans in London will be for the present much greater if they are launched with his authority and on his advice."—Jt. S. C. R. 2.

3. (1) No loan shall be raised by a local Government without the sanction (in the case of loans to be raised in India) of the Governor-General in Council, or (in the case of loans to be raised outside India) of the Secretary of State in Council, and in sanctioning the raising of a loan, the Governor-General in Council or the Secretary of State in Council, as the case may be, may specify the amount of the issue and any or all of the conditions under which the loan shall be raised.

(2) Every application for the sanction of the Secretary of State required by this rule shall be transmitted through the Governor-General in Council.

4. Every loan raised by a local Government in accordance with these rules shall be a charge on the whole of the revenues allocated to the local Government, and all payments in connection with the service of such loans shall be made in priority to all payments by the local Government other than the payments of—

- (i) the fixed provincial contribution payable to the Governor-General in Council,
- (ii) interest due on sums advanced to the local Government by the Governor-General in Council from the revenues of India, and
- (iii) interest due on all loans previously raised by the local Government.

In accordance with these powers, some provinces did raise their own loans, the most notable of them being the 6½ per cent Income Tax Free Bombay Development Loan; but of recent years the provinces have not raised any more loans in the open market, but agreed to do their borrowing jointly through and with the Government of India.

Besides the Provincial Contributions, which, though made a first charge upon the provincial finances, are made progressively reducible so as to disappear altogether in ten years, the provision of Famine Relief is made a specially secured charge upon the Provincial Finance. Every year in their Budget the provinces must make an assignment for famine relief and insurance, respectively as:—

Province.	Assignment.	This fixed assignment is calculated roughly on the basis of an average expenditure on this account in the provinces named. In any years when there is no need to spend any part of this assignment—which can be spent only on actual
	Rs.	
Madras	6,61,000	
Bombay	63,60,000	
Bengal	2,00,000	
United Provinces	39,60,000	
Punjab	3,81,000	
Burma	67,000	
Bihar and Orissa	11,62,000	
Central Provinces	47,26,000	
Assam	10,000	

famine relief, or protective or preventive irrigation and other works, or for grant of loans to cultivators—the unspent balances must be allowed to accumulate, and if these accumulations exceed six times the annual provision in a province, the local Government may suspend the assignment temporarily. This fund remains with the Government of India, who pay interest on the unspent balances.

IX Bombay Provincial Finance.

The subjoined is a bird's-eye-view of the Finances of the Bombay Presidency under the new regime:—

ESTIMATED REVENUE FOR 1922-23.

PRINCIPAL HEADS OF REVENUE.

		Rs.
II	Taxes on Income	...
		3,00,000
V	Land Revenue	...
		5,97,25,000
VI	Excise	...
		3,70,76,000
VII	Stamps	...
		2,30,00,000
VIII	Forest	...
		88,70,000
IX	Registration	...
		14,50,000
	Total	...
		13,04,21,000

Irrigation, Navigation, Embankments, &c.

XIII	Works for which Capital Accounts are kept	...
		23,36,000
XIV	Works for which no Capital Accounts are kept	...
		1,20,000
	Total	...
		24,56,000
XVI	Interest	...
		76,44,000

Civil Administration.

		Rs.
XVII	Administration of Justice	10,50,000
XVIII	Jails and Convict Settlements	4,58,000
XIX	Police	2,19,000
XX	Ports and Pilotage	53,000
XXI	Education	8,65,000
XXII	Medical	5,88,000
XXIII	Public Health	12,000
XXIV	Agriculture	2,90,000
XXV	Industries	22,000
XXVI	Miscellaneous Departments	89,000
	Total	36,46,000
XXX	Civil Works	7,29,000

Miscellaneous.

XXXIII	Receipts in aid of Superannuation	8,90,000
XXXIV	Stationery and Printing	1,92,000
XXXV	Miscellaneous	2,45,000
	Total	13,27,000

XL Miscellaneous adjustments between the
Central and Provincial Government... Nil.

Total Revenue ... 14,62,23,000

Capital Account not charged to Revenue.

XLII	Bombay Development Scheme	89,93,000
	Debts, Deposits and Advances	12,76,82,000
	Opening balance	1,21,82,000
	Grand Total	29,50,80,000

ESTIMATED EXPENDITURE FOR 1922-23.

Direct demands on the Revenue.

	Rs.
2. Taxes on Income	...
5. Land Revenue	... 2,10,85,000
6. Excise	... 29,54,000
7. Stamps	... 5,14,000
8. Forest	... 56,31,000
9. Registration	... 7,61,000
Total	... <u>3,09,45,000</u>

Irrigation, Embankment, &c., Revenue Account.

	Rs.
14. Interest on works for which Capital Accounts are kept	... 35,56,000
15. Other Revenue Expenditure financed from Ordinary Revenue	... 43,99,000
Total	... <u>79,55,000</u>

*Irrigation, Embankment, &c., Capital Account
(charged to Revenue).*

16. Construction of Irrigation, Embankment, &c., Works	... Nil.
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Debt Services.

19. Interest on ordinary Debt	... 1,13,56,000
21. Sinking Funds	... 9,77,000
Total	... <u>1,23,33,000</u>

Civil Administration.

	Rs.
22. General Administration	73,88,000
24. Administration of Justice	65,63,000
25. Jails and Convict Settlements	27,32,000
26. Police	1,88,22,000
27. Ports and Pilotage	1,20,000
30. Scientific Departments	60,000
31. Education	1,73,68,000
32. Medical	42,49,000
33. Public Health	18,36,000
34. Agriculture	25,12,000
35. Industries	4,63,000
37. Miscellaneous Departments	4,70,000
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Total	6,25,83,000
	<hr/>

Currency, Mint and Exchange.

40. Exchange	13,02,000
	<hr/>

Civil Works.

41. Civil Works	1,37,58,000
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Miscellaneous.

43. Famine Relief and Insurance	63,51,000
45. Superannuation allowances and Pensions	53,49,000
46. Stationery and Printing	20,03,000
47. Miscellaneous	30,05,000
	<hr/>
Total	1,67,08,000
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		Rs.
51.	Contributions and assignments to the Central Government by Provincial Government ...	56,00,000
52.	Miscellaneous adjustments between the Central and Provincial Governments ...	50,000
	Total ...	<u>56,50,000</u>
	Total Expenditure ...	<u>15,12,34,000</u>

Capital Account not charged to Revenue.

55.	Construction of Irrigation Works ...	82,80,000
59.	Bombay Development Scheme ...	3,39,50,000
	Other Expenditure not charged to Revenue ...	86,51,000
	Debt, Deposit and Advances ...	7,77,94,000
	Closing balance ...	<u>1,51,71,000</u>
	Grand Total ...	<u>29,50,80,000</u>

CHAPTER VII.

PART VIA.

STATUTORY COMMISSION.

84 A. (1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State with the concurrence of both Houses of Parliament shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government, then existing therein, including the question whether the establishment of second chambers of the local legislature is or is not desirable.

(2) The commission shall also inquire into the report or any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

The appointment of a Royal Commission under statutory authority of this Act is the one provision of that enactment which, were there no others, would amply distinguish this measure from all other measures of a like description. It at once makes some progress, limits or defines the rate of that progress, and declares the measure to be clearly a temporary provision. The fact, however, that this section attempts to outline the terms of reference to a Royal Commission ten years after 1919, is noteworthy. If the Commission is to inquire, "whether and to what extent it is desirable to establish the principle of responsible government," the implication is irresistible that the Act of 1919 has *not* established that principle. How, then, are we to look upon the dyarchy introduced by the Act of 1919? As already mentioned, the authors of the Act of 1919 considered this the best and most efficacious means to give effect to the Declaration of 1917, which spoke of an

"immediate, substantial measure of responsible Self-Government." Read together, these two documents make the clause of this section quoted above utterly inconsistent. On the other hand, the further provision in the same section that the commission is to inquire into the possibility of extending, modifying or restricting "the degree of responsible government, *then existing therein*", is open to more than one interpretations. It admits the possibility of a revision of the present constitution of India, both forwards and backwards, whereas the Indian people at least believe that there can be and will be no retrograde revision of the constitution of 1919. Their belief would prove to be a misapprehension, if the above interpretation is correct. And if, in the words quoted, stress is laid on the phrase "*then existing therein*" there would be at least an arguable possibility of the constitution of 1919 being capable of further extension even before the advent of the Royal commission herein provided for. At any rate, the Act of 1919, which, by this section, provides a mechanism for its own revision *after* a given period, cannot be construed to be so rigid *during* that period as not to permit of a modification within that period. That section of the Indian public opinion therefore, which desires a revision so as to bring about an immediate establishment of responsible government in India, is, at least by the express terms of the Statute, not utterly illogical or inconsistent with the governing principle of the constitution as established in 1919.

CHAPTER VIII.
PUBLIC SERVICES IN INDIA.

PART VII.

**Salaries, Leave of Absence, Vacation of Office,
Appointments &c.**

85. (1) There shall be paid to the Governor-General of India and to the other persons mentioned in the Second Schedule to this Act, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in that Schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and, subject to or in default of any such order, as are payable at the commencement of this Act;

(2) Provided as follows:—

- (a) an order affecting salaries of members of the Governor-General's executive council may not be made without the concurrence of a majority of votes at a meeting of the council of India;
- (b) if any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him;
- (c) nothing in the provisions of this section with respect to allowances shall authorise the imposition of any additional charge on the revenues of India.

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein, provided that nothing in this subsection shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons by the Secretary of State in Council.

86. (1) The Governor-General-in-Council may grant to any of the members of his executive council, other than the commander-in-chief, and a Governor-in-Council and a Lieutenant-Governor in Council may grant to any member of

his executive council, leave of absence under medical certificate for a period of not exceeding six months.

(2) Where a member of council obtains leave of absence in pursuance of this section, he shall retain his office during his absence, and shall, on his return and resumption of his duties, be entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office shall become vacant.

87. If the Governor-General, or a Governor, or the Commander-in-Chief of His Majesty's forces in India, and save in the case of absence on special duty or on leave under a medical certificate, if any member of the executive council of the Governor-General other than the Commander-in-Chief or any member of the executive council of a governor or of a Lieutenant-Governor departs from India, intending to return to Europe, his office shall thereupon become vacant.

88. *Omitted.*

89. (1) If any person appointed to the office of the Governor-General is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council, he may make known by notification his appointment and his intention to assume the office of Governor-General.

(2) After the notification, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General-in-Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the council, shall be valid, subject nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior member of the council other than the Commander-in-Chief then present, shall preside therein with the same powers as the Governor-General would have had if present.

90. (1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, the Governor of a Presidency who was first appointed to the office of Governor of a presidency by His Majesty shall hold and execute the office of Governor-General until a successor arrives, or until some person in India is duly appointed thereto.

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-

General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the salary and allowances appertaining to his office of Governor; and his office of Governor shall be supplied, for the time during which he acts as Governor-General in the manner directed by this Act with respect to vacancies in the office of Governor.

(3) If, on the vacancy occurring, it appears to the Governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in council, he may make known by notification his appointment, and his intention to assume the office of the Governor-General, and thereupon the provisions of Section 89 of the Act shall apply.

(4) Until such a Governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent the senior member of the executive council, other than the Commander-in-Chief shall hold and execute the office of the Governor-General until the vacancy is filled in accordance with the provisions of this Act.

(5) Every vice-president or other member of council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing his salary and allowances as member of council for that period.

91. (1) If a vacancy occurs in the office of Governor when no successor is on the spot to supply the vacancy, the vice-president, or, if he is absent, the senior member of the Governor's executive council, or, if there is no council, the Chief Secretary to the local Government, shall hold and execute the office of Governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting Governor shall, while acting as such, be entitled to receive the emoluments and advantages appertaining to the office of Governor, foregoing the salary and allowances appertaining to his office of member of council or secretary.

92. (1) If a vacancy occurs in the office of a member of the executive council of the Governor-General other than the Commander-in-Chief or a member of the executive council of Governor, and there is no successor present on the spot, the Governor-General-in-Council, or Governor-in-Council, as the case may be, shall supply the vacancy by appointing a temporary member of council.

(2) Until a successor arrives the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may

exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If a member of the executive council of the Governor-General, other than the commander-in-Chief or any member of the executive council of a Governor, is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave, or special duty, the Governor-General-in-Council, or Governor-in-Council, as the case may be, shall appoint some person to be a temporary member of Council.

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive half the salary of the member of council whose place he fills, and also half the salary of any other office which he may hold, if he hold any such office, the remaining half of such last named salary being at the disposal of the Governor-General-in-Council or Governor-in-Council, as the case may be.

(5) Provided as follows :—

(a) No person may be appointed a temporary member of council who might not have been appointed to fill the vacancy supplied by the temporary appointment; and.

(b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's executive council, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

93. (1) A nominated or elected member of either chamber of the Indian Legislature or of a local Legislative Council may resign his office to the Governor-General or to the Governor, Lieutenant-Governor, or Chief Commissioner, as the case may be, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office, the Governor-General, Governor, Lieutenant Governor or Chief Commissioner, as the case may be, may, by notification published in the Government Gazette, declare that the seat in council of that member has become vacant.

94. Subject to the provisions of this Act, the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make rules as to the absence on leave or special duty of persons in the service of the Crown in India, and the terms as to continuance, variation or cessation of pay, salary and allowances on which any such absence may be permitted.

95. (1) The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to and promotions in military offices under the Crown in India, and may reinstate military officers and servants suspended or removed by any of those authorities.

(2) Subject to such rules, all appointments to military offices and commands in India, and all military promotions, which, by law, or under any regulation, usage or custom, are, at the commencement of this Act, made by any authority in India, shall, subject to the qualifications, conditions, and restrictions, then affecting such appointments and promotions, respectively, continue to be made in India by the like authority.

96. No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India

96A. Notwithstanding anything in any other enactment, the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state, or any named member of any independent race or tribe in territory adjacent to India, shall be eligible for appointment to any such military office.

PART VII A.
The Civil Services in India.

96B. (1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services :

Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

(3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

(4) For the removal of doubt it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.

96C.—(1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Secretary of State in Council. Each member shall hold office for five years, and may be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Secretary of State in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Secretary of State in Council.

(2) The public service commission shall discharge, in regard to recruitment and control of the public service in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council.

96D. An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold in office during His Majesty's pleasure. The Secretary of State in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

(2) Subject to any rules made by the Secretary of State in Council, no office may be added to or withdrawn from the public service, [and the emoluments of no post may be varied, except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Government of India, according as the post is or is not under the control of a local government.

96E. Rules made under this Part of this Act shall not be made except with the concurrence of the majority of votes at a meeting of the Council of India.

COMMENTS.

Ss. 85-96 (both inclusive).

The salaries of the Viceroys, Governors, and Members of Councils are fixed at the maximum in the first schedule of this Act. Originally they were so fixed by 3 & 4 Wm. IV, c. 85, s. 76; but the same Act declared that these salaries were subject to such reductions as the Court of Directors, with the sanction of the Board of Control, might at any time think fit. The salaries of the Commander-in-Chief and of the Lieutenant-Governors were fixed at 1,00,000 Company's rupees by 16 and 17 Vict. c. 95, s. 35, and they were made liable to the same provisions and regulations as the salaries fixed by the Act of 1833. At the present time it would seem that the salaries may be fixed at any amount not exceeding the amounts fixed by the Acts of 1833, and 1853. "The power to reduce," says Ilbert, "has been exercised more than once, but it is open to argument whether the power to reduce involves a power to raise subsequently."

The schedule to the consolidating Act of 1919 fixes the salaries as under:—

Office.	Maximum annual salary.
Viceroy	Rs. 2,56,000
Governors of Bengal, Madras, Bombay and United Provinces	,, 1,28,000
Commander-in-Chief... ..	,, 1,00,000
Governors of Punjab and Bihar & Orissa	,, 1,00,000
Governor of the Central Provinces	,, 72,000
Governor of Assam	,, 66,000
Lieutenant-Governor	,, 1,00,000
Member of the Viceroy's Council	,, 80,000

Member of the Governor's Council in Bombay, Madras, Bengal and U. P.	...	..	64,000
Member of Executive Council, Punjab and Bihar & Orissa	...	..	60,000
Member of the executive council Central Provinces	...	..	48,000
Member of Executive Council, Assam	...	..	42,000

Besides the salaries thus fixed by law, a certain number of specified officers are entitled to an allowance for equipment and voyage to India, such as the Viceroy, the Governors of Presidencies, Commanders-in-Chief, Members of the Viceregal Council, Judges of High Courts, and Bishops of Calcutta, Madras and Bombay. These allowances are fixed by the Indian Salaries and Allowances Act of 1880, but they may be altered or abolished by the Secretary of State in Council. Under that Act the following allowances are paid to-day:—

Viceroy	...	...	£ 5,000
Governors of Presidencies	...	..	1,000
Commander-in-Chief	...	..	500
Member of Council...	...	..	300
High Court Judges...	...	..	300
Bishops	...	..	300

These allowances are paid, it should be further noted, only when the officer in question is resident in Europe at the time of his appointment. If he resides anywhere else a smaller allowance will be paid. No additional charge can be levied on the revenues of India under the Act of 1880, or for the purpose of these allowances.

The following table compares the salaries and allowances of the principal dignitaries of some other countries with those of India.

Office.	Salary and allowance.	Equivalent in Rs.	Pre-war rate estimated per capita wealth of the country per annum.
United States: President	\$ 75,000 + \$ 15,000	Rs. 3,00,000	£ 72 = 1,080
„ Cabinet Minister	„ 12,000	„ 36,000	„ 38 = 570
France: President	Fr. 1,200,000 + 1,200,000	„ 4,50,000	„ 50 = 750
Britain: Premier	£ 5,000	„ 75,000	„ 17,18,000
Lord Chancellor	„ 10,000	„ 1,50,000	„ 50 = 750
Lord Lieut. of Ireland	„ 20,000	„ 3,00,000	„ 50 = 750
India: Viceroy	„	„ 17,18,000	„ = 50

These salaries paid to the chief or the most important officers in some of the leading countries of the world leave the impression that the salaries paid in India are excessive, in relation either to the wealth and the taxable capacity of the people of India, or to the degree of responsibility borne or actual work done by these officers. The subject, however is more fully discussed below.

PART VIII.

The Indian Civil Service.

97. (1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make rules for the examination, under the superintendence of those Commissioners, of British subjects and of persons in respect of whom a declaration has been made under section 96A of this Act, who are desirous of becoming candidates for appointment to the Indian Civil Service.

(2) The rules shall prescribe the age and qualifications of the candidates, and the subjects of examination.

2(a) The admission to the Indian Civil Service of a British subject who or whose father or mother was not born within His Majesty's dominions shall be subject to such restrictions as the Secretary of State in Council, with the advice and assistance of the Civil Service Commissioners, may think fit to prescribe, and all such restrictions shall be included in the rules.

(3) All rules made in pursuance of this section shall be laid before Parliament within fourteen days after the making thereof, or if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(4) The candidates certified to be entitled under the rules shall be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council.

(6) Notwithstanding anything in this section the Secretary of State may make appointments to the Indian Civil Service of persons domiciled in India in accordance with such rules as may be prescribed by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of the Council of India.

Any rules made under this sub-section shall not have force until they have been laid for thirty days before both Houses of Parliament.

98. Subject to the provisions of this Act, all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

99. (1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of

proved merit and ability domiciled in British India, and born of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualifications of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

100. (1) Where it appears to the authority in India, by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India, and who has, before his appointment, fulfilled all the tests, (if any) which would be imposed in the like case on a member of that service.

(2) Every such appointment shall be provisional only, and shall forthwith be reported to the Secretary of State, with the special reasons for making it: and, unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within 12 months of the date of appointment intimates such approval to the authority by whom the appointment was made, the appointment shall be cancelled.

1. The Fundamentals of Public Service in India.

The service of the East India Company in India was composed of three grades:—Writers, Factors and Merchants. The pay and conditions of service, during the period that the Company was merely a body of merchants, may perhaps have been adequate; but as the Company began to be transformed into a ruling sovereign body, the emoluments of its servants became wretchedly insufficient, and the temptation to provide against a rainy day by illicit means became irresistible. The abuses thus creeping into the service had attracted the attention of authorities

both at home and in India; and attempts were made by men like Clive and Hastings to check the rapacity of the Company's servants by removing the possibility of temptation from their way. Besides, the training of the Company's servants was utterly inadequate to help them in the discharge of their duties as administrators. It was not, however, till the days of Lord Cornwallis that the Public Service of the country was organised on a more satisfactory basis. Three main principles governed the new institution, to which the name of the Covenanted Service of the East India Company was given. These were: (1) that every civil servant should enter into a covenant not to engage into trade, nor receive presents from the natives, and to subscribe for the pension fund. In return the Company bound themselves to provide a handsome scale of pay and regular promotion, as also a certain pension for every servant retiring after a certain number of years of service. The Company also undertook to set apart a certain number of the more important posts in its service in India for men so drafted. This principle is maintained almost intact even to-day. The civil servant of to-day has not only to enter into a covenant as before; he must also observe the Government Servants' Conduct Rules, which are applicable to every public servant in India, however chosen. The scale of pay, allowances and pension remains almost unchanged. Every retiring Civil Servant—whether before his retirement he was a Lieutenant Governor, a High Court Judge, or merely a District Officer—gets the same pension of £1000 a year; while the widows and orphans of the deceased members of the service are provided for by an annuity fund to which every civilian, married or single, must subscribe. As regards the number of posts reserved for the members of the covenanted service, the Act of 1793, modified by the Indian Civil Service Act of 1861, offered them the posts of Secretaries and Under-Secretaries to Government, Commissioners of Revenue, Civil and Sessions Judges, Magistrates and Collectors of Districts etc. The present Act reserves for them the offices of:—

Secretary, joint secretary and deputy secretary in every department except the Army, Marine, Education,

Foreign, Political, and Public Works Departments: Provided that if the office of secretary or deputy secretary in the Legislative Department is filled from among the members of the Indian Civil Service, then the office of deputy secretary or secretary in that department, as the case may be, need not be so filled.

2. Three offices of Accountants General.

B.—*Offices in the provinces which were known in the year 1861 as "Regulation Provinces."*

The following offices, namely:—

1. Member of the Board of Revenue.
2. Financial Commissioner.
3. Commissioner of Revenue.
4. Commissioner of Customs.
5. Opium Agent.
6. Secretary in every department except the Public Works or Marine Departments.
7. Secretary to the Board of Revenue.
8. District or sessions judge.
9. Additional district or sessions judge.
10. District magistrate.
11. Collector of Revenue or Chief Revenue Officer of a district.

Though so many offices are reserved for the members of the Indian Civil Service—as the covenanted service is now called—they by no means exhaust the list. It has been said that nearly

one-fourth of the members of the service now aggregating over 1300 men are employed in posts not exclusively reserved for them. They serve in Native States, in the Post Office, in the Police department, in important Municipalities, and great Public Trusts like the Port Trust or the City Improvement Trust in Bombay. On the other hand, it must be added, that recent statutes, beginning from 1870, have enabled the authorities in India to appoint to posts reserved for the members of the Civil Service, men who have not passed the test of the service. Such appointments are made from amongst men of proved merit and ability in accordance with rules made by the Governor-General in Council, and sanctioned by the Secretary of State in Council with a majority of votes at a meeting of the India Council.

The second principle accepted in 1793 was that the first appointments to the service should be made by the Directors of the Company in England without any interference by the authorities in India, while the subsequent promotion of men once appointed should depend entirely upon the authorities in India without any interference from home. This principle has been modified to some extent in the course of time. The right of nomination of the Directors was taken away in 1853 when the service was thrown open to competition among the natural born subjects of Her Majesty, and that system was maintained by the Act of 1858, and is accepted by the present Act. Still the principle remained that the first appointments should be made in England by the Secretary of State upon the recommendation of the Civil Service Commissioners. Even this was modified in 1870. The Charter Act of 1833 and the Queen's Proclamation of 1858 had distinctly promised that the public service will not be closed to the natives of the country by reason merely of their caste, colour, or creed, and that the only requirement of recruiting would be merit and efficiency. But the fact that the first appointments were to be made in England operated by itself as a bar to the admission of Indians in the service of their country. Men who were able to pass any, the most stringent, test were, however, precluded from serving their

country honourably and profitably, because they were unable to bear the expense of a protracted residence in England and unwilling to run the social risks of a voyage to Europe. This was impressed upon the authorities at home, and the Act of 1870 was passed, which, after reciting that "It is expedient that additional facilities should be given for the employment of Natives of India, of proved merit and ability, in the Civil Service of Her Majesty in India," authorised the appointment of Natives of India to posts in the civil service irrespective of the statutory restriction, and subject only to rules made by the Governor-General in Council and sanctioned by the Secretary of State and a majority of his council. This Act, however, could not be carried into effect at once. It was not till 1876 that rules were framed by the Governor-General in Council which threw open to the natives of India of "proved ability and merit" one-sixth of the posts usually held by members of the Indian Civil Service. Thus in Bombay 2 posts of Collectors, 1 of Talukdari Settlement Officer on the Revenue side, 2 posts of District and Sessions Judges, 3 posts of Assistant Judges, 1 post of the Registrar of the High Court, once held by the members of the Indian Civil Service, are now open to natives of India not belonging to the Civil Service proper. But the rules did not work satisfactorily in practice. Though the intention of the Government of India was sought to be given effect to by reducing to five-sixths the appointments made in England, between 1876 and 1889 only about 60 Indians could be appointed to this "Statutory Civil Service" as it was called. Already in 1886 a commission was appointed by the Government of India under the presidency of Sir C. Aitchison—"to devise a scheme which might reasonably be hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher employment in the public service." The Commission was a representative body, and made recommendations under which the following scheme was framed.

"The Civil Service for the management of the higher branches of the executive and judicial administration is divided

into 3 sections: first is the Imperial Civil Service, recruited in England by competitive examination and open to all subjects of the King-Emperor. It has its own conditions and standards, and a few natives have been able to pass its tests and obtain employment within its ranks. It fills the majority of the highest civil offices together with such a number of less important offices as would provide a course of training for the younger members of the service. The second is called the Provincial service, recruited in each province chiefly from among educated natives by nomination, and sometimes by examination and promotion from the subordinate service. Admission to this branch of the service is regulated by rules framed by the Local Governments and approved by the Government of India. The members of the provincial service are eligible for some of the offices reserved for the I. C. S., and lists of such posts open to them have been published. The third is the subordinate service which is recruited almost exclusively from the natives of the country and is entrusted with minor posts." (Strachey).

But this arrangement was far from satisfying the Indians' thirst for a greater share in the administration of their country. Indians had been thought worthy of a place in the India Council ever since 1907, and they had also been admitted to the Executive Councils of the Governor-General and the various Governors; and naturally they came to demand admission in larger and larger numbers to the posts reserved for the civil servants. Government could not ignore their claims; and so in 1912, a Public Services Commission was appointed, consisting among others of three Indians, to report upon the matters in connection with the Civil Services. But the changes recommended by this Commission were found by Indians to be trifling and far from satisfactory. And therefore the famous declaration of August 1917 reiterated that Indians were henceforth to be employed in larger numbers in the administration of their own country. Two years later, the Act of 1919 provided that the Secretary of State might

make appointments to the Indian Civil Service of persons domiciled in India in accordance with such rules as may be prescribed by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of the India Council. And to give the Indians a greater opportunity of qualifying themselves for the service, simultaneous examinations were held for the first time in 1922 both in England and in India. Besides, to facilitate Indianization of the services, thirty-three per cent of the new appointments, to be increased in ten years from 1919 to make forty-eight per cent, is reserved for Indians. This figure of course will cover the total Indian recruitment for all services, including promotions from the Provincial Service, and appointments of practising lawyers in India, besides candidates selected as a result of the competitive examinations held in India. But the gradual increase of the Indian element in the public service, according to the promises of the Report on the Constitutional Reforms, is brought about in such a manner that the existing European element does not suffer in the least. Posts and departments have been multiplied, and Indians have been appointed mostly to these new posts, so that while the burden of the administration becomes more costly, the strength of the non-Indian element remains undiminished. The Indian Legislative Assembly has accordingly passed a resolution for the more rapid Indianisation of the services, and the Government has in 1923-24 appointed a Royal Commission on the matter.

The third principle adopted in 1793 was that regulations should be framed for insuring proper training and qualifications in the aspirants for the Indian Civil Service. These regulations are made, under the present Act, by the Secretary of State for India in Council, with the advice and assistance of the Civil Service Commissioners. These regulations should be submitted to Parliament, 14 days after their framing. They prescribe the age limit of the candidates and their qualifications as also the subjects of examinations. These have varied from time to time. For instance the age limit before

1906 was 21 and 23, while from 1909-1922 the rule was that the candidates appearing for the Civil Service Examination in London must not be under 23 years of age in August of that year and must not be over 24 years of age. For the open examination held in 1923, the age limits were 21 to 24 ; whilst from 1924 onwards, the age limit will be 21-23 on the first of August of the year of competition. A candidate once plucked is allowed a second attempt, but no one is allowed more than two attempts in all. Originally the nominees of the Court of Directors were sent direct to join their appointments, but the want of adequate previous training made them inefficient. Lord Wellesley sought to remedy this defect by opening a College at Calcutta in 1800 to give the necessary preliminary training to newly arrived Civilians ; but this attempt was foiled by the Directors who started in 1805 a College at Haileybury. Till the day-1858-when this College was closed, nominees to the Indian Civil Service underwent there a course of two years' training before proceeding to take up their appointments in India. At the present time the practice is a little different. After a candidate has shown the required proficiency at the Civil Service Examination, and has been recommended for appointment by the Civil Service Commissioners, he is encouraged to pass some time at an English University to pursue there a prescribed course of study. Up to the present day, the probationary course was one year. For candidates selected in 1924 and subsequent years, however, the probationary course will be two years. During those years, probationers of European domicile are given an allowance of £300 per annum, and those of Indian domicile £ 350 per annum. At the end of the period, there is another examination, failure to pass which might mean final loss of service, while seniority in the service is determined by combining the results of the open competitive examination, and this final compulsory examination.

The principles, therefore, adopted in 1793, have all been maintained upto the present, with such slight modifications as

the progress of the country demanded. There are practically the same covenants—if anything more strict than before ; there are nearly the same posts reserved for them, though the increase in the activities of the State have been met by the comparatively wider employment of Indians ; there is nearly the same scale of pay, allowance and pensions, as also the general conditions of service. The first appointments are even now made in England, though there has been, since 1870, some authority delegated to the Government of India to make appointments under certain limitations ; and, since 1919, half the appointments can be made in India. The regulations regarding the courses of study, age and qualifications have varied from the day that Lord Macaulay drafted the first regulations : but the general principle that there should be a certain standard of efficiency for the candidate is maintained. In addition to the Imperial Civil Service, there are also other services organized provincially, and bearing the names of their provinces e. g. The Bombay Civil Service, the Madras Civil Service etc. ; and lastly there are subordinate Civil Services staffed in the main by Indians, and governed by rules framed on the model of the rules for the Indian Civil Service.

II. The Career Of a Civil Servant.

Every young civilian, on joining the service in India, is attached to a district as assistant to the Collector. He is given the powers of a Magistrate of the lowest class, and is required to pass an examination in a vernacular language, local laws, and Revenue Procedure. When he has passed that examination he attains the full magisterial powers and holds charge of a revenue sub-division. At this stage he has two alternatives—to go into the Judicial branch of the service or the Executive branch. In the former line, in the regular course of promotion,

III. Other Public Services.

general service," says Sir Courtney Ilbert, "Besides this, there are special services such as the Education department, the Public Works Department, the Forest Department, and the Police Department. To these we might add the Agricultural service, the Medical service, and the Ecclesiastical service. In all those services there are generally speaking three main branches, viz:—the Imperial branch, recruited chiefly in England from Englishmen, the provincial branch recruited in India from Indians, and the subordinate branch recruited in India's-eye-view of the conditions and prospects of some of the most important of the services:—

1. The Educational Department.

1. The Educational Service, has two main branches.

This service, like the Civil Service, is recruited largely from the Imperial Educational Service by the Secretary of State. It consists of two branches: (a) the teaching branch, including principals and professors of Colleges and Head Masters in certain High Schools; and (b) the Inspectors of Schools. They are all appointed by the Secretary of State, as vacancies occur, on the recommendation of a Selection Committee. As a rule candidates must not be under 23 years of age nor over 30. They must have a University Degree in certain subjects according to the nature of the appointment. The salaries paid are: Rupees 350 a month rising by annual increments of Rs. 50 monthly to Rs. 1,250 a month with overseas allowances of a maximum of Rs. 250, and a few selection posts in each province of Rs. 2,000 p. m. and more.

The Provincial branch is recruited chiefly from Indian graduates in India. It includes some principals and professors of colleges, head masters of schools, and translators to the Government.

ernment. The minimum pay is Rs. 200 and maximum Rs. 750 in this branch of the service. The subordinate Educational service includes a few head masters, Assistant Deputy Inspectors, and the assistant masters in the Government High Schools and Middle Schools. The minimum pay in this service is Rs. 40 and the maximum somewhere near Rs. 400. As in the case of other services, the maximum percentage of posts reserved for Indians (or Burmans) is fixed at 50 per cent; and it is expected that as vacancies occur, they will be filled by qualified Indians, and that the prescribed percentage will soon be reached.

2. The Indian Medical Service.

The service is under the Government of India and consists of some 803 medical men recruited in part in England by competitive examination. Its chief duty is the care of the Indian troops and of the British officers and their families. In the course of time these duties have been amplified so that to-day they include the provision of medical aid to civil servants and their families, the administration of the civil Hospitals in large towns, and the supervision of numerous small dispensaries, public as well as private, the sanitation of large areas, the protection of water supply, and the prevention of epidemic disease. The jails in British India are also in their charge, and, upto recently, the officers in the mints have been recruited from members of this service. Lastly, the service provides men who are engaged in original research on tropical diseases, and others who teach in medical colleges and are allowed to practise their profession, thus helping to familiarize India with Western medicine.

The service dates from the earliest days of the East India Company. In 1898 the officers of the service were given military rank; and since 1906, the names of the officers serving

in the different provinces are all combined in one list. Since 1853 the service has been thrown open to the Indians, and up to 1910 nearly 90 men of purely Indian extraction had been able to find employment within its ranks. And while in the Civil Service hardly three per cent. of the whole body were Indians in 1913, in the Indian Medical service the proportion of Indians was over 5 per cent, and is yearly increasing. The service is recruited by open competition under rules and regulations framed by the Secretary of State in Council. The rules operating at present may be summarised as follows:—

The candidates must be natural born subjects of His Majesty of British or East Indian descent. They must be of sound bodily health, married or unmarried. They must possess a medical qualification registrable in the United Kingdom. No candidate is allowed to compete more than three times, while candidates for the examination in each year must be between 21 and 28 years of age. These examinations are held twice a year—in January and in July. Successful candidates are appointed as Lieutenants on probation, and, after two short courses of study at the Royal Medical College, Aldershot, are drafted in the regular service. At the head of the service is the Director-General—sometimes called Surgeon-General—who is an official of the Government of India. The pay varies from Rs. 420 to Rs. 3,000 a month.

The Salaries, Leave and Pensions rules for the branches of service, other than the Indian Civil Service proper, are modelled on those of the main body of the public service. The initial start even in the highest grades is somewhat lower, and the prospect of ultimate rise is less tempting than the corresponding features in the Civil Service proper. But the provision of a liberal pension, which, in the superior grades in all departments, ranges from Rs. 6,000, upwards, with the right to non-Indians to convert it at the rate of 1s. 9d. to the rupee and to commute a third of it on fair terms of capitalisation, make the service in almost every branch amply recognise the duty of the state to become a model employer, and offer

reasonably decent terms of living to its public servants. The active service required to earn a pension is given at 21 years out of a total nominal service of 30 years, due to generous provisions with regard to leave of all sorts and on a number of pretexts. Normally, under the present rules of the service, ordinary leave is allowed at the rate of 5-22nds of the period of service, subject to definite conditions about the maximum period that at any time can be enjoyed in leave on full, or half pay, or the two combined. The basic justification for such leave regulations originally was the belief that long continued service in tropical regions tends to enervate the European's faculties of the mind and body, which could and should be encouraged to be recuperated by occasional relaxation on leave in more temperate regions. This idea still persists, and since 1922, the old system of privilege leave at the rate of 1-11 of the period of service has been liberalised to give 5-22nd. It is unnecessary for our purpose to go more fully into the details of the regulations. Suffice it to say that in addition to salaries on a handsome scale, the liberal pensions and provident funds make the conditions of Indian public service as handsome as the best in the world.

IV. Review of the Public Service Organisation.

A general survey of the terms and conditions of the public service in India in all the various branches and departments leaves clear the impression that these conditions are by no means harsh or ungenerous. The salaries have been fixed from the very start high enough, not to secure a given standard of efficiency in the work alone, but rather to secure the foreign high-placed servant of the state in India against the common temptations of public service which had become a great scandal; and to indemnify these officers, as far as the money emoluments and general facilities of the service could indemnify, against the sacrifices of a service in a foreign

country distant from their homes. In the years when the Indian recruit of suitable position and qualifications was not available, the practice of manning all the important posts in the service by Europeans on such terms could have its obvious justification in the security of the state and the efficiency of the administration. But in degree as the Indian element began to be more and more suitable; and the level of prosperity of the Indian people more and more carefully analysed, with reference particularly to their ability to bear these burdens, a feeling grew up in the country that the employment of such a large number of foreign officers on high pay, with generous not to say extravagant terms of leave and pensions and other allowances, not only shut out a corresponding number of the children of the soil from the opportunities and emoluments of the service of their country, but occasioned a serious, continued drain of their country's resources, which reacted most injuriously upon the further industrial development of their country. We have already reviewed in outline the attempts that have been made in the past to make some kind of a response to this sentiment by a statutory or other extension of the opportunities open to the Indians. Meanwhile the problem came to be further complicated by the introduction of a new political element. The extension of democratic institutions in India, coupled with the promise of establishing a Government in India responsible to the people of India has caused a feeling of uneasiness in the mind of the European public servants, which was not allayed by the provision, in the latest instalment of constitutional reforms in India, of a permission to retire on advantageous terms to those who elected not to serve under the new regime, and of ample security of their existing position to those who decided to remain in the service, together with ample facilities for appeal to the supreme authority in the event of any injustice being done by the new popular elements in the Government. The new Indian element in the Government has, on the other hand, made itself felt by a steadily increasing demand for the wholesale Indianisation of the services, which resulted in the

Government of India circularising the local Governments as to the possibility of further and more rapid Indianisation. The non-Indian section of the public service was rendered farther uneasy by these moves. The result has been a new Royal Commission, appointed mainly at the instance of the European element by pressure from Whitehall, and in the teeth of the opposition in the Indian Legislative Assembly, which went the length of refusing to vote the grant for the Royal Commission, which the Viceroy had to restore by the exercise of his extraordinary powers of certification. It remains to be seen what recommendations the new commission makes, and how they are going to be given effect to.

CHAPTER VII.
Judicial Administration.

PART IX.
THE INDIAN HIGH COURTS.
Constitution.

101. (1) The High Courts referred to in this Act are the high courts of judicature for the time being established in British India by letters patent.

(2) Each high court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint.

Provided as follows :—

- (i) The Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act;
- (ii) The maximum number of judges of a high court, including the chief justice and additional judges, shall be twenty.
- (3) A judge of a high court must be :—
 - (a) A barrister of England or Ireland or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or
 - (b) A member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or
 - (c) A person having held judicial office, not inferior to that of a subordinate judge or a judge of a small causes court, for a period of not less than five years; or
 - (d) A person having been a pleader of a high court for a period of not less than ten years.

(4) Provided that not less than one-third of the judges of a high court, including the chief justice but excluding additional judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.

(5) The high court for the North-Western Provinces may be styled the high court of judicature at Allahabad, and the high court at Fort William in Bengal is in this Act referred to as the high court at Calcutta.

102. (1) Every judge of a high court shall hold his office during His Majesty's pleasure.

(2) Any such judge may resign his office, in the case of the high court at Calcutta to the Governor-General in Council, and in other cases to the local Government.

103. (1) The chief justice of a high court shall have rank and precedence before the other judges of the same court.

(2) All the other judges of a high court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their patents.

104. (1) The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage, of the chief justices and other judges of the several high courts, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(2) The remuneration fixed for a judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

(3) If a judge of a high court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death, make up the amount of one year's salary.

(4) If a judge of a high court dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

105. (1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice the Governor-General in Council in the case of the High Court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court, to perform the duties of chief justice of the court until some person has been appointed by His Majesty to the office of chief justice of the court, and has

entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or the local Government, as the case may be, sees cause to cancel the appointment of the acting judge.

Jurisdiction.

106. (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdictions, powers and authority as are vested in those courts respectively at the commencement of this Act.

(1) (a) The letters patent, establishing, or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further letters patent.

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

107. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

108. (1) Each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

108. (1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court, to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside British India.

(2). The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and null the order as from the day on which the Governor-General notifies that he has received intimation of the disallowance, but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

110. (1) The Governor-General, each Governor, lieutenant-governor and chief commissioner and each of the members of the Executive Council, of the

Governor-General, or of a governor or lieutenant governor, and a minister appointed under this Act shall not—

- (a) be subject to the original jurisdiction of any high court by reason of anything counselled, ordered, or done by any of them in his public capacity only; or
- (b) be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor
- (c) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the chief justice and other judges of the several high courts.

111. The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject: but nothing in this section shall exempt the Governor-General or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent court in England.

Law to be Administered.

112. The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents, and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or custom having the force of law, decide according to the law or custom to which the defendant is subject.

Additional High Courts.

113. His Majesty may, if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included

within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers, and authority as are vested in or may be conferred on any high court existing at the commencement of this Act; and where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

Advocate General.

114. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an advocate-general for each of the presidencies of Bengal, Madras and Bombay,

(2) The advocate-general for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England.

(3) On the occurrence of a vacancy in the office of advocate-general, or during any absence or deputation of an advocate-general, the Governor-General in Council in the case of Bengal, and the local Government in other cases may appoint a person to act as advocate-general; and the person so appointed may exercise powers of an advocate-General until some person has been appointed by His Majesty to the office and has entered on the discharge of his duties, or until the advocate-general has returned from his absence or deputation, as the case may be, or until the Governor-General in Council or the local Government, as the case may be, cancels the acting appointment.

I. History of the Courts of Justice.

The early charters of the Company gave a general authority to establish Courts of law in their possessions in India. But the necessity for a more regularly constituted judicial authority was not felt till **1726**, when the Company petitioned the King to establish *Mayor's Courts*. As a result three courts were created, one each at Bombay, Madras and Calcutta, consisting

of a Mayor and 9 aldermen for the trial of actions between Europeans within those towns and their dependent factories. At the same time a sort of an appellate tribunal was created in the shape of the President and Council, who heard appeals from the Mayor's Courts; while from the Presidency Government an appeal lay to the King in Council in cases involving sums exceeding Rs. 4000.

The Reforms of Hastings.

The series of English victories which followed the Battle of Plassey, and ended in the transfer of the powers of Government to the Company, changed this organisation. Under the arrangements made in 1765, the administration of civil justice was taken over by the Company, while that of criminal justice still remained in the hands of the Nawab. This state of things gave rise to considerable inconvenience which Hastings tried to avert by placing the organisation of justice on a more regular basis. He created a civil court—Diwani Adalat—for each district, presided over by a European Zilla Judge and aided by Hindu and Mahomedan law officers. For minor cases he appointed Registrars and Native Commissioners called Sadar Amins and Munsifs. To supervise these he established four Civil Courts of appeal in four important centres, and over these was the Sadar Diwani Adalat or the highest Civil Court of appeal consisting of the Governor and his Councillors assisted by native officers. As regards criminal justice, corresponding reforms were effected at the same time. Nizamat Adalats—or Provincial Courts of Criminal Justice—were instituted in each province, and Courts of Circuit, under the presidency of the judges of the civil appellate courts, were constituted as courts of criminal appeal. Alongside the Sadar Diwani Adalat, a Sadar Nizamat Adalat was established as the highest Court of Criminal Appeal.

The Regulating Act.

Soon after these reforms, the judicial system in India was complicated by the institution of the Supreme Court by Parliament in 1773. The new Court was a creature of Parliament, independent of the Company, and consisted exclusively of professional lawyers. It superseded the Mayor's Court, but not the Court of Requests, and was vested with the most extensive jurisdiction, subject to an appeal to the Privy Council in cases involving Rs. 4,000 or more. The relations between the new Court and the Company's Courts were not defined, as also the relations between it and the Executive. At the same time the Supreme Court adopted, without modification, English law and procedure, which were entirely unsuitable to the Indian conditions of the day. Hastings tried to remedy the antagonism between his adalats and the Supreme Court by appointing his friend, Sir Elijah Impey, the chief justice of the latter, to the Sadar Diwani Adalat; but his attempt failed.

II. The Present System.

The present system was inaugurated by the Indian High Courts Act of 1861. On the establishment of the High Courts the old Sadar and Supreme Courts were abolished, and the jurisdiction of both was conferred upon the High Courts. These were established at first in Bombay, Madras and Bengal, and later on in Agra at Allahabad, while a High Court was established for the new Province of Bihar and Orissa at Patna in 1915, and another at Dacca in 1922. The Chief Court at Lahore has also been raised to the status of a High Court for the Punjab. The Judges of the High Courts are appointed by the Crown and are selected partly from the Judicial branch of the I. C. S. and partly from the Indian and English bar, and hold office during the pleasure of the Sovereign. In this respect the practice in India is different from that of

England, where the Judges are appointed during good behaviour. The difference between these two kinds of tenures is that, while the officers appointed during the pleasure of the sovereign can be removed by the King at any time he likes without giving any reasons, the officers appointed during good behaviour cannot be removed except if they commit such offences as render them unfit for their post in the eyes of a competent tribunal. The necessity of the independence of the Judges, to secure an impartial administration of justice, requires, that the Judges in India, as in England, be appointed during good behaviour, and be not removable except on an address to that effect by the Houses of Parliament, or by the Legislative Councils in India. Perhaps we can trace this principle of judicial appointments during the pleasure of the Sovereign to the necessity, which once existed, of the impartial authority of the Crown being given a power of removal of the obnoxious servants of the Company. That reason, of course, would not justify the present maintenance of this obsolete principle; but the composition of the Judicial bench makes it advisable that the principle be maintained even now. For at least one-third of the Judges of the High Court are members of the Civil Service who hold their position only so long as the King is pleased to continue them in their office. If the judges in India as in England cannot be removed merely at the will of the sovereign, the change must necessarily follow that judges should not be drawn from the Indian Civil Service.

One third of the judges of the High Court must also be barristers or members of the Faculty of Advocates of Scotland, the remaining places being filled by members of the local bar. It is provided that the Chief Justice of a High Court shall always be a barrister, but that relates to the permanent occupant of the post, temporary or acting Chief Justices being indifferently drawn from the Civil Service or from the profession.

III. The Chief Courts and Judicial Commissioners.

The High Court is charged with the superintendence of all subordinate Courts within the Province. Corresponding to the High Courts of Bengal, Madras, Bombay, Allahabad, Patna, Dacca and Lahore for the Punjab, there are Chief Courts at Nagpur and at Rangoon for the province of Burma. Unlike the High Courts, the Chief Courts are established by the Governor-General-in-Council, and derive their authority from him. The position and pay of the Judges of the Chief Courts are also inferior to those of the High Courts. In all other respects they are on the same level as the Chartered High Courts. In the remaining Provinces the highest judicial authority is vested in one or more Judicial Commissioners. In Sind, the Judicial Commissioner is called the Judge of the Sadar, and has two colleagues.

IV The Lower Civil Courts.

As regards the Subordinate Courts, the constitution and jurisdiction of the inferior Civil Courts varies from province to province. Broadly speaking, for each administrative district one District Judge who is usually a member of the I. C. S. is appointed to preside in the principal Civil Court of his district with original jurisdiction. Under the District Judges are the Subordinate Judges and Munsifs, the extent of whose original jurisdiction is not the same in the different parts of India. The officers are mainly Indians. Generally speaking they are graded in three classes, with definite limitations on the powers and jurisdiction of a judge of each class.

Besides these inferior Civil Courts in the mofussil there are the Courts of Small Causes which are very important in the Presidency Towns of Madras, Bombay and Calcutta. They have powers to try money suits of Rs. 1,000, or, with the consent of the parties, suits upto Rs. 2,000 in value. The

increasing pressure of original work upon the High Courts in the Presidency Towns has led to the suggestion that the jurisdiction of the Small Causes Courts be raised to money suits of Rs. 5,000 or less, but the suggestion has not yet materialized. Another suggestion of a like nature aims at creating a City Court in these centres, but that too has not been given effect to.

V. The Lower Criminal Courts.

As regards the Subordinate Criminal Courts, they are divided into Courts of Sessions and Courts of Magistrates. By the Criminal Procedure Code, every province, outside the presidency towns, is divided into sessions divisions. A sessions division does not always correspond to an administrative district. Frequently a sessions division includes more than one district. Each sessions division has a Court of Sessions, presided over by a Sessions Judge, with such assistance as the size of the division and the volume of the work may require. A Sessions Judge is usually also a District Judge at the same time. The Sessions Courts are competent to try all accused persons—committed to the sessions by the Magistrates' Courts—and to inflict any sentence authorised by law; with this modification, however, that a sentence of death by a Sessions Court is subject to confirmation by the highest court of criminal appeal within the province. Trials before the Courts of Sessions are by assessors or juries. The former assist the Judge in framing a judgment, though their opinion is not binding upon him. In the latter the verdict given by a majority prevails, if accepted by the presiding Judge.* Though the verdict of a jury is usually binding on the Judge, he has power to refer a case

* Hazrat Mohani's case in Ahmedabad in 1922 was tried upon two counts, on one by a jury, on the other by assessors. The verdict of the jury was not accepted by the judge, and the case was accordingly referred to the High Court which accepted the verdict of the jury.

to the highest criminal tribunal in the province, if in his opinion, the verdict of the jury is manifestly in opposition to the facts or the weight of evidence. The prerogative of mercy is vested in the Governor-General in Council and the local Government, without prejudice to the superior authority of the Crown in this respect.

The Courts of Magistrates like the Courts of the Subordinate Judges on the civil side, are graded into three classes, each class of Magistrates having well-defined powers. A Magistrate of the first class, for instance, can inflict a sentence of two years' imprisonment, or a fine of Rs. 1,000. For offences requiring more serious punishment, the Magistrates can only hold a preliminary inquiry, and commit such cases for trial by the Court of Sessions.

In the Presidency Towns there are Presidency Magistrates, with the powers of First Class Magistrates, to try the less important offences, and to commit the more important ones to the Sessions. Each Presidency Town is a Sessions Division by itself, and the Sessions Court in a Presidency Town consists of a Judge of the High Court sitting on the original side with the Criminal jurisdiction of the High Court. Such Sessions Courts are held three or four times a year.

Besides the Presidency Magistrates, there are Honorary Magistrates in the Presidency Towns, to dispose of petty cases. Such Honorary Magistrates are now created in every important town.

In addition to these officers, Coroners are appointed in Calcutta, Bombay and Madras to inquire, with the aid of a Jury, in cases of sudden and suspicious deaths, and to commit suspected persons for trial before the Sessions Court. In the mofussil the work of the Coroner is done by the ordinary staff of Magistrates and Police officers unaided by Jurors.

VI. The Jurisdiction of the High Courts.

The High Courts in India have full civil and criminal, original and appellate, jurisdiction. Its ordinary, original, civil jurisdiction is exercised, for the Presidency towns, in respect of all suits, except the minor money suits assigned to the Small Causes Court within the Presidency Town, by a single judge. An appeal lies from the decision of a judge on the original side to a bench on the appellate side. In the case of other towns which—like Allahabad or Lahore—have a High Court, the court has no such jurisdiction, their only ordinary original jurisdiction being confined to criminal proceedings against a British European subject. From the jurisdiction of the Indian High Courts, the Governor-General and the members of his council, as well as the Governors of the provinces, together with their councillors, and Ministers, are exempt; nor can they be arrested in connection with any suit or proceeding before a High Court. This exemption of theirs has probably arisen from the quarrels of Warren Hastings with the Supreme Court, as in the famous Nundkumar affair; and more particularly in the Cossijurah case. On the other hand certain specified offences *e.g.* (1) oppression of any of His Majesty's subjects, (2) wilful disobedience of the orders of the Secretary of State, (3) engaging in trade, or (4) receipt of any bribe by way of a gift, gratuity or reward are made punishable as misdemeanours by the King's Bench Division of the High Court in London.

Mention may here be made of a point of some constitutional importance. After the events following the proclamation of martial law in the Punjab in 1919, the Government of India passed an Act of Indemnity exonerating the participants from the legal consequences of their acts. It may be questioned, however, whether, if a proper case had been brought by any sufferer before an appropriate tribunal, the Indemnity Act passed by the Indian Government would have been held valid. It is almost certain that on a similar case being brought before the highest English tribunal, *i.e.* the King's Bench Division, the Indian Act of Indemnity, being passed by a non-

sovereign law-making body, would not have constituted a valid defence before the supreme court of justice in England.

The extraordinary original jurisdiction of the High Courts consists of : (1) the right to call for returns from all Subordinate Courts, (2) and the right to remove any suit on the file of a Subordinate Court, and try the same itself, either with the consent of the parties, or merely to further the ends of justice. The High Court exercises a constant control and supervision over the working of all the Subordinate Courts within the jurisdiction by examining their periodical returns, by sending for particular proceedings, calling for explanations, &c. All this is altogether apart from that other power of supervision, which it exercises through the cases that constantly come before it for appeal. It also issues general rules for regulating the practice and proceedings before such courts, as well as prescribes forms.

The High Courts are Insolvency Courts for the Presidency Towns, and they act as Courts of Matrimonial causes for such of His Majesty's subjects as have their own marriage laws permitting divorce by such a public tribunal.

The Ecclesiastical Jurisdiction of the Indian High Courts relates only to the Established Church of England; while their jurisdiction with regard to offences on sea, and in connection with Prize Courts, was conferred upon them by a number of statutes and charters. In this connection it may be mentioned that for every offence committed on land, both the procedure and the substantive law to be applied are those of British India; and the same is the case for offences committed whether on land or on sea by British Indian subjects of His Majesty. The case is slightly different with regard to offences committed at sea by persons other than the natives of India. The proceedings in such a case will be regulated by the Code of Criminal Procedure, but English law will have to be applied to determine the nature of the crime and the extent of the punishment.

Under the Indian Criminal Law Amendment Act, 1908 (XIV), persons accused of any of the offences specified there—chiefly offences which may be described as the terrorist attempts to overthrow the Government—may be tried in a High Court by a special bench of 3 Judges. As a rule offences are tried in the High Courts by a Judge and Jury; but in this case no jury is allowed—as also in all civil cases. This act was repealed along with the other Repressive Laws in 1921.

VII The Revenue Courts.

The High Courts have no power to exercise original jurisdiction in matters concerning the revenue, or acts done in collecting the same. These cases are tried by a special set of courts, called the Revenue Courts, presided over by the chief Revenue Officers, the Collectors. The relations of these courts with the other civil courts in the country have given rise to serious difficulties in the past and the balance of official opinion has inclined now in favour of one and now in favour of the other. The present situation may be described thus. The civil courts are excluded from all cases concerning the assessment and collection of land revenue—and from other purely fiscal cases. But all questions of title to land—though closely connected with questions of assessment—are triable by the civil courts. And even in cases of rent disputes, *i.e.* disputes relating to the fixing and payment of rents between land-lords and tenants—the ordinary civil courts are supreme, especially in Bengal; and in those provinces where the local tenancy laws still leave such cases to be dealt with by the Revenue Courts, the procedure of these Courts is assimilated to that of the civil courts. Appeal from the Revenue Courts may be made to the Board of Revenue wherever this institution exists, and in provinces where it does not, such appeals probably lie to the officer in charge of the Land Records and Revenue Settlement.

VIII. The Privy Council.

As with the whole of the Empire, the final Court of Appeal for Indian cases is the Judicial Committee of the Privy Council. The prerogative of the Sovereign to hear appeals from his subjects beyond the seas, though regulated and modified by Acts of Parliament, local rules, and orders in council, is still maintained. In 1833 was constituted a Committee of the Privy Council to hear such appeals from British subjects beyond the seas. This Committee, though for all practical purposes a final Court of Appeal, adopts in its judgments the form of advising the Sovereign, who, therefore, stands out as the final dispenser of all justice. He has the right to refer any matter for advice to this Committee; but, apart from this, the conditions of appeal from India are regulated by the Charters of the High Court, and by the provisions of the Code of Civil Procedure. As regards civil matters an appeal lies from the High Court or any court of final appellate jurisdiction; from a final decree of the High Court in the exercise of its original jurisdiction; and from any other decree if the case is certified by the High Court as fit for appeal. In the first two cases the value of the subject matter of the suit in the court of first instance must be at least Rs. 10,000; and when the decree appealed from affirms the decision of the court immediately below, the appeal must also involve some substantial question of law. In criminal cases a right of appeal is given, provided the High Court certifies that the case is fit for appeal, from any judgment, order, or sentence of a High Court made in the exercise of original jurisdiction, or in any criminal case where a point of law has been reserved for the opinion of the High Court. The Sovereign also may grant special leave to appeal. The idea of a Central Court of Final Appeal in India itself has not yet materialised.

IX. The Position of the European British Subject.

Every subject of the Crown is equal as far as the substantive criminal law is concerned; but in procedure certain distinctions have been maintained—thanks to the peculiar position the Company's servants occupied in India—as regards charges against European British subjects. Upto 1836 every case, whether civil or criminal, in which a European was concerned as a defendant, could be tried only in the Supreme Court at Calcutta. This naturally gave rise to a great deal of injustice, for a European defendant or offender could compel the aggrieved party in a mofussil centre to go all the way, with all his witnesses, to Calcutta, with all the dangers and hardships of such a journey in those days, and take his chance of the proverbial blindness of justice. Under the circumstances very few natives could be found spirited and rich enough to pursue European offenders to justice. This situation was partly remedied. In 1836 the District Courts were given power to try all civil suits in which a European was concerned as a defendant. The anomaly remained intact with regard to criminal cases. An effort was made in 1872 to remove it partially, when it was enacted that European British subjects should be liable to be tried for any offences by magistrates of the highest class—who were also Justices of the Peace—and by judges of the Sessions Court, provided that in each the trying judge was himself a European British subject. This provision made the anomaly greater than before. For it was obvious to every one concerned with the Government of India, that natives of India, who had passed that competitive examination and entered the Civil Service, would, in the ordinary course of promotion, become magistrates of the highest class and Sessions Judges; and would yet be debarred from trying European offenders, simply because they were not born of European parents.

It was this monstrous absurdity which Lord Ripon felt most acutely, and which he tried to remove most completely. The Government of India announced in 1883 that they had

decided "to settle the question of jurisdiction over European British subjects in such a way as to remove from the code, at once and completely, every judicial disqualification which is based merely on race distinction." No sooner was this decision announced than a storm of protest was raised by the Anglo-Indian community, the like of which has never been witnessed in India before or since. The Government of Lord Ripon, frightened by the protest, agreed to a compromise, which is thus summarised by Sir John Strachey:—"The controversy ended with the virtual, though not the avowed abandonment, of the measure proposed by the Government. Act III, of 1884 by which the law previously in force was amended, cannot be said to have diminished the privileges of European British subjects charged with offences, and it left their position as exceptional as before. The general disqualification of the native judges and magistrates remains; but if a native of India be appointed to the post of District Magistrate or Sessions Judge, his rights are the same as those of an Englishman holding the same office. This provision, however, is subject to the condition that every European British subject, brought for trial before the District Magistrate or the Sessions Judge, has the right, however trivial be the offence, to claim to be tried by a jury, of which not less than half the members shall be Europeans or Americans.... Whilst this change was made in the powers of the District Magistrates, the law in regard to other magistrates remained unaltered." To remedy this state of affairs, a motion was adopted in the Legislative Assembly in 1921 "that in order to remove all racial distinctions between Indians and Europeans in the matter of their trial and punishment for offences, a committee be appointed to consider what amendments should be made in the provisions of the Code of Criminal Procedure, 1898, and to report on the best methods of giving effect to their proposals." The report of the Racial Distinctions Committee as it was called was published after over a year in February 1923, and a Bill was framed to give effect to its recommendations, whereby the anomalous position of the European British subject has been

largely modified, and most of his exceptional privileges abolished, or extended to the Indian subjects of His Majesty. We shall here briefly summarise the main features of the report, and the Government Bill, to give effect to its recommendations.

(1) European British subjects, when tried before a High Court, a Court of Sessions or a District magistrate, can only be tried by a jury of which not less than half the jurors shall be Europeans or Americans. The Racial Distinctions committee could not abolish this privilege, because of the storm of protest that was raised in European quarters; but it has effected a compromise on this issue, and extended a similar privilege to Indians, who can now, whenever they are tried by a jury, claim a mixed jury consisting of not less than half of their own nationality.

(2) The Bill removes the distinction between European and Indian British subjects as regards the classes of offences for which, in particular districts, trial before the court of sessions is by jury or with the aid of assessors. Indian British subjects are henceforth given equal privileges with Europeans as regards the constitution of the jury and assessors.

(3) Upto the present day, European British subjects could not be tried by a second or third class magistrate, but were only triable by a first class magistrate, if he was a J. P. and himself a European British subject, unless he was the District Magistrate or a Presidency Magistrate. The Bill does away with most of these privileges. Though European subjects cannot be tried even now by second and third class magistrates except in cases punishable with fine not exceeding Rs. 50, any first class magistrate, even if he is an Indian, may now try a European British subject. The most rigorous sentence, however, that magistrates of the first class or District magistrates or Courts of Sessions, may award in the case of European British subjects is limited to, three months' imprisonment and a fine of Rs. 1000; 6 months' imprisonment

and a fine of Rs. 2000; or a year's imprisonment and an unlimited fine.

(4) The Bill proposes that so far as sentences of death, penal servitude, imprisonment or fine are concerned, the powers of Magistrates shall be the same with European as with Indian British subjects. As regards Magistrates who possess some special powers under certain sections, though they can pass a sentence of imprisonment upto seven years on the Indians, they may not pass on European British subjects sentence of imprisonment exceeding two years or whipping. The committee has made several recommendations as regards the abolition of even these privileges; and Government is going to institute inquiries into the matter.

(5) Upto now, Indians were not allowed to appeal against the decision of a Magistrate who had passed a sentence of imprisonment not exceeding three months only, or of a fine not exceeding Rs. 200 only or of whipping only. The Bill lays down that in cases of sentences of a fine not exceeding Rs. 200 only, there will be no appeal for Indians or for Europeans either; and it gives to all, Indians and Europeans, sentenced to any term of imprisonment, the right of appeal. Again, Europeans had upto now more extensive rights of appeal, and could even, at their option, appeal to a High Court. The Bill abolishes this right.

(6) European British subjects can obtain writs in the nature of a Habeas Corpus from the High Courts of Judicature established by letters patent when outside the limits of British India; while Indians can get that protection only within the presidency towns.

(7) Lastly, an order in writing of the Governor-General in Council is no justification for any act complained against a European; whilst such an order would be a complete justification against an Indian in any court of law. But this is one of the very few privileges enjoyed by the Englishman at the present day as regards the criminal procedure applicable

to him. Besides, the number of Europeans enjoying these few privileges will be reduced because of the fact that only persons of European descent in the male line can claim these privileges.

X. The Combination of Executive and Judicial Functions.

Another question of constitutional importance connected with the administration of justice is the concentration of all the authority of Government in the hands of the same officer. The basic principle of Indian administration is the concentration of all authority with a view to promote efficiency. Thus the chief officer in an administrative unit is the head of the revenue department, directs the police, controls the Local Boards and Municipalities, and administers justice himself, or superintends his subordinates in the administration of justice.

This concentration of authority is open to attack from several points of view. Taking first the model of the British constitution, the practice in India seems to be at variance with the fundamental principles of the British constitution. Ever since King James I was foiled by Lord Coke in His Majesty's own court, the independence of the Judges was established; and the Revolution of 1688 secured it by law. The judges in England are, of course, subordinate to the sovereign authority of Parliament; but, they have nothing to do with the Executive. Between the Executive and the Judiciary in England there is no link at present, with the single exception of the Lord Chancellor, who is both a Cabinet Minister and a high judicial officer. But the Lord Chancellor never sits in any court of original jurisdiction; and he cannot, therefore, be placed in the awkward position of having advised certain proceedings in his capacity as executive minister, and being called

upon to try the same case in his capacity as judicial officer. This is precisely what happens in India. The district officer is the head of the District Superintendent of Police, as far as the investigation of crime in a district is concerned. He is also the head of the Government pleader-the public prosecutor-of the District. The prejudices of the investigator of crime, and the preconceptions of the prosecutor are fatal to a judicial mind; and yet the District Officer-being the District Magistrate-may be called upon to judge important criminal cases in the district. It is not inconceivable that such judges may give sound justice; but it is also not inconceivable that the famous principle of English criminal law *viz.* "that it is better that ten guilty persons should escape punishment than that one innocent person should suffer," will not be maintained. It is alleged in answer to this criticism that in practice the District Officer does not try any important cases, because he has no time to do so. But, it may be urged, even if he himself does not try important cases, his subordinate magistrates have to try them: and there is no guarantee that the subordinates-whose promotion in the service depends upon the goodwill of their superior-will not try to please him, if he drops a hint about the guilt or innocence of men awaiting their trial. We cannot, of course, adduce any instances to support the view that District Officers do interfere with the judicial independence of their subordinates; for, by their very nature, such things take place behind the scenes. But there is nothing unreasonable or unnatural in assuming that the power of control, which the District Officers have by law over their subordinates, may be used to encourage the latter in proper subordination and a wholesome desire to please. It is also pointed out, by the advocates of the existing system, that the assumption is unwarranted that the District Officer allows his judgment to be coloured by the prejudices of the investigator and the preconceptions of the prosecutor of crime. It would, indeed, be a gross mistake if we assumed that the investigator, the prosecutor, and the judge are combined in the same officer. Still it is quite possible that the head of the administration is kept

informed of all that takes place in the district; and that owing to this information he may, unknown even to himself, have formed opinions on a case not strictly according to the merits of the case, but according to the bent of that information.

Another point of principle on which the present system is objectionable is that the Magistrates are primarily revenue officers and only incidentally judges. They are not trained lawyers, and cannot, therefore, be a match for all the subterfuges of legal practitioners. The criminal law of India, it is true, is contained in a simple code, which, after a few years' experience, any well educated man can administer. Still it is a serious handicap to a man who has never practised himself to administer even this simple code when confronted by acute practitioners. The plea that in the peculiar conditions of India a Magistrate with full local knowledge of the district would make a better judge than the lawyer pure and simple is equally inadmissible. For the bulk of the magistracy is recruited from men who know very little the language of their districts, and can therefore have but scanty knowledge of the customs and beliefs of the psychology of the people. Moreover a professional lawyer, who is raised to the bench after years of practice, will not allow justice to suffer, either for want of common sense, or through an excessive regard for the letter of the law. For there is no profession in our modern society wherein, by constant contact with every shade of character, with every kind of villainy, weakness or virtue men learn so well to appreciate their fellows at their proper value as in the profession of law. It is a profession, which, by destroying all ideals, promotes one's common sense. And as regards excessive respect for the letter of the law, perhaps no one knows better than a lawyer when the letter of the law needs to be stretched, and how it should be stretched. Almost the whole of the English common law is a growth of such judicial interpretations and extension. Hence from the point of view of principle the present system is indefensible.

But after all that has been said against the combination of Executive and Judicial functions in one and the same officer, we must note that in practice, the position is not quite opposed to the ideas of an efficient administration for several reasons:—

(1) The administration of civil justice is entrusted in most countries to special judicial officers who have no concern with the Executive administration or the police work of the country.

(2) Even in criminal cases, justice is administered in High Courts and Courts of Sessions by men who have long since severed their connection with the Executive branch of the public service.

(3) Even in cases tried by magistrates who have executive authority,

(a) In practice the Collector hardly tries any important cases himself, because he is too busy with his own work to spare time for anything else;

(b) The same officer does not investigate the crime and also prosecute the criminal;

(c) The collector does not as a rule interfere in the work of his judicial subordinates;

(d) As a safe-guard against possible injustice, wide latitude is given for appeal, and men who have been acquitted in the face of evidence against them can be tried again for the same offence.

Thus though the position is indefensible in theory, it makes for efficiency, since the administration of justice by men who know the habits and sentiments of the people is to be preferred to the dispensing of justice by lawyers who might respect too much the letter of the law to be able to deal out efficient justice. This is the greatest justification of the system.

In 1899 ten leading Indian judicial officers presented a Memorial to the Secretary of State on this subject. The points, summed up by the Memorial, make out a strong case for the separation of the executive from judicial functions. One of the latest Decennial Report on the Moral and Material Progress of India says, "The question of carrying further the separation of executive and judicial functions has received much consideration in recent years. In Bengal some steps tending in this direction have been taken, in the course of the natural process of administrative development, by the appointment of additional district magistrates to relieve the pressure on the district officers, and by an increase in the number of outlying judicial centres in the mofussil. The very heavy expenditure that would be involved in the complete separation of the two classes of functions is necessarily an important factor in the case." To this it may be replied that the point at issue is not merely to relieve the pressure of work upon the District Officer; it is rather to bring about a complete divorce between executive and judicial functions. Magistrates should have only judicial work and nothing to do with any kind of executive duties. Merely appointing additional magistrates will not help the situation, unless the additional magistrates are debarred from taking part in any executive duties. And as regards the "very heavy expenditure," we may calculate that for the 250 districts which make up the whole of the British territories in India, an increase of Rs. 25,000 a year—quite enough to bring about a complete separation in one district—would mean a total additional expenditure of Rs. 62·5 lacs. If the question at issue is one involving a great, fundamental principle, perhaps it would not be too great a sacrifice to incur this additional expenditure, and prevent those opportunities for "suspicion, distrust and discontent" which must necessarily arise under the present system, and which cannot but be deplored.

XI The Law Officers and the Organisation of the Bar.

The Government of India have their most important Law Officer in the Law Member of Council. Their Legislative Department has much in common with the officer of the Parliamentary Counsel in England. All Government measures are drafted by that department; all bills before the Council, when referred to a Select Committee, are discussed by that Committee under the presidency of the Law Member. It publishes all the Acts of the Government, revises the Statute Book, drafts all statutory rules, and assists other departments with legal advice in certain specified questions of a non-litigious character. Legislation in the Provincial Councils is watched and guided by the same department. In spite of these duties, however, the Law Member of Council in India, does not correspond to the Attorney-General and Solicitor-General in England, the highest Law Officers of the British Crown. Their place is taken in India by the various Advocates-General, the most important of whom is the Advocate-General of Bengal, who is appointed by the Crown from among the most prominent practitioners at the local bar, and who is always an nominated member of the Provincial Legislative Council. He advises the Government in legal matters, and conducts their litigation, and assists them in their legislative work. He is assisted by standing counsel and Government Solicitor. In Bombay and Madras there is also an Advocate-General for each province, who discharges the same functions in his province as the Advocate-General of Bengal. In Bombay he is assisted by Government Solicitor, and to the Secretariat are attached a Legal Remembrancer (a Civil Servant) and a Deputy Legal Remembrancer (a practising Barrister).

XII The Laws Administered in India.

The early English settlers in India established themselves in the country under license from native rulers. They

ought, therefore, to have been subject to the native systems of law. But the two great indigenous systems of law are both systems of personal law, knowing no local limit, and binding upon individuals within their respective faiths, all the world over. There was, therefore, no *lex loci* to govern such aliens in race and religion which the English then were. Moreover, the system of Capitularies in force with Turkey, and recognised by the International Law of Europe in the XVII century, regarded European settlers in the non-Christian countries as under the system of law in force in their own country. Hence the first Charters assumed that the English brought their own legal system in India, and the Charter of 1726 specifically introduced the Common Law and some of the older Acts of Parliament as applicable to Englishmen in India. As they grew to be a sovereign power, the English inclined towards making their law the public and territorial law of India; and in 1773, with the establishment of the Supreme Court and the advent of English lawyers, they proceeded to apply the English law in its entirety to all the inhabitants within the Company's jurisdiction. The hardships, which followed this indiscriminate application of English law are too well known, even to the ordinary student of Indian history, to need a detailed consideration here. In 1780 this was changed by a Declaratory Act, s. 17 of which required that Hindu Law and usage should be applied to Hindus, and Mahomedan Law and usage to Mahomedans. This rule was in course of time extended to all the dominions of the Company.

The Government in India have thus accepted the indigenous systems of law, with such modifications as they thought India was fit to receive. The rigidity of the old systems has been considerably undermined by a variety of influences, the most important of which are the growth of education and enlightenment among the peoples themselves, the influence of Western ideas of Government, and of the case law emanating from courts established on English models. Acts of Parliament, and still more frequently, Acts of local legislatures,

such as the Caste Disabilities Removal Act of 1850, or the Hindu Widows Remarriage Act of 1856, or the Age of Consent Act of 1893, have all tended in the same direction. Codes of Procedure have been practically the creation of the present Government, as also the various laws relating to land-lords and tenants. At the present time, therefore, "Native law has been wholly superseded, as to criminal law and procedure and as to civil procedure, by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act and other enactments ; and has been largely superseded as to other matters by Anglo-Indian legislation ; but still regulates, as personal law, most matters relating to family law and to the law of succession and inheritance among the Hindus, Mahomedans, and other natives of the country". (Ilbert.)

The laws in British India may therefore, be either,

- | | |
|------------------------------------------------------------------------------|------------------------------------------------|
| (a) English Common law, or | } In presidency towns applicable to Europeans. |
| (b) some old English statutes, or | |
| (c) Hindu and Mahomedan law | } Personal for Hindus and Mahomedans |
| | |
| or | |
| (d) Acts of Parliament. | } Applicable to all persons in British India. |
| (e) Acts of Indian Legislatures. | |
| (f) Statutory rules, orders and by-laws supplementing particular enactments. | |
| | |

We may note in passing that a great portion of the statutory law of India is codified. The most important of these codes are the Indian Penal Code, passed in 1860, and in force today with very few modifications, the Codes of Procedure, and of Evidence, and the Law relating to Contract.

X. Comparison with the English System of Justice.

All our codes and our entire judicial system are said to be based on the English model. And yet a close study of the two

systems of law and justice reveals many and fundamental differences. Most of these have already been described, and some of them critically examined. In this place we shall collect together all those features of the Indian judicial and legal system which, in a comparison with the English system, constitute the peculiarities of our system.

(1) The one peculiarity of our system that has not yet been touched upon is contained in s. 111 of the present Act.

The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any High Court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject; but nothing in this section shall exempt the Governor-General or any member of his Executive Council or any person acting under their orders from any proceedings in respect of any such act before any competent Court in England.

Ever since the case of the Chancellor Lord Nottingham in the reign of Charles II, who pleaded an express order of the King for having affixed the great seal to an unlawful order, the principle has been well established in England that no order of the Crown shall grant an exemption to any minister or servant of the Crown for any wrongful act done in his private or official capacity. The above section goes entirely against the spirit of this principle, and is only defensible, if at all, on the ground that it was necessitated by the peculiar position of the Indian Government under the Company.

(2) The presence on the Judicial Bench of the highest tribunals in India of men who have never in their lives been practising lawyers constitutes another such peculiarity of the Indian system.

(3) The tenure, too, of judicial officers "during the pleasure of the Sovereign" is a marked departure from the recognised principles of the English constitution in this respect.

(4) The position of the "Jury," though an English institution, is too different from that of the same institution in England to pass unnoticed. It is employed more sparingly, and is allowed less extensive powers than in England; for only in original criminal cases before the High Courts is the jury employed in India and never in civil suits. Besides, the difficulty of finding intelligent jurors able to discriminate between right and wrong and with a sense of their responsibility to the public has led the legislator to make a judge more independent of a Jury than he would be in England, so much so that the Act provides that if a presiding officer believes that the verdict of the jury is manifestly unjust, he may refer the case to the High Court, which may set aside or modify the verdict of the jury. And lastly, in the absence of a proper jury, a case is tried with the aid of assessors whose verdict is not binding upon the judge. All this shows the extent to which the institution of the Jury differs in the two countries.

(5) The immunity of high officers of state from legal liability, the special privileges of whole classes of private individuals like the European British subjects, the existence of special tribunals exclusively empowered to try specified kinds of cases, are all peculiarities of the Indian system of judicial administration unparalleled in England.

(6) To these may be added the combination in the hands of one and the same officer of executive and judicial functions.

(7) Lastly in England no man can be tried again for the same offence; but that principle has not been followed in India. Instances of serious miscarriage of justice due to race prejudice having been brought to the notice of Government, it has been provided that whenever a local Government believes that a man has been acquitted in spite of manifestly overwhelming evidence against him, it can once again bring the offender to justice before a competent tribunal for the same offence.

There are other cases in which the Indian system differs from the English system ; but, probably, the cases enumerat

ed here are the only cases in which the difference is fundamental while in other cases the difference is one of details.

XIV. The Indian Police and Jails System.

For the effective administration of justice the existence of some form of police organisation is indispensable, both to carry out the punishment inflicted by courts of law, as well as to prevent the possibility of crime, and thus to minimise the occasions of the exercise of the punitive authority. After describing the judicial system of India we shall now proceed to give a brief sketch of the police organisation of India. There are about 203,000 officers and men in the Indian police; and 30,000 officers and men of the military police. The cost of maintaining this huge force has recently risen owing to the increases of pay and allowances made in consideration of the increased cost of living. The budget estimate for 1922-3 is Rs. 90,78,000.

The police force in India may be divided into the regular police force and the village police organisation. The regular police establishment is in most provinces a single force under the Local Government, and is formally enrolled. In Bombay each district has its own separate police organisation. The force is in each province under the general control of an Inspector-General, who may be a police officer, or a member of the Indian Civil Service. Under him are the Deputy Inspectors-General of Police, holding charge of the portions of the province, each known as a Range. The most important unit of Police administration is the district, with a District Superintendent of Police, who is responsible for the discipline and the internal management of the force to his departmental superiors at the headquarters; while in all matters connected

with the preservation of peace, and the detection and suppression of crime and its prevention he is the subordinate of the District Officer. He is assisted by one or more Assistant or Deputy Superintendents. The former are ordinarily recruited in England by competitive examination from among candidates who must be of European descent. In exceptional cases appointments may be made directly in India. The Deputy Superintendents constitute the Provincial branch of the Police service, and these officers are recruited in India partly by promotion from the rank of Inspectors, and partly by direct appointments of the natives of India who have the requisite educational qualifications. Their functions and departmental status is closely similar to those of the Assistant Superintendents. For Police purposes the district is divided into "circles", each in the charge of an Inspector; and the circle is again split up into areas in each of which there is a police station in charge of a Sub-Inspector of Police. The average area of a Police Station is nearly 200 sq. miles; and where the work of investigation is heavy additional Sub-Inspectors are appointed. In Bombay there are also subsidiary Police Stations, known as "Outposts" in charge of Head Constables. It is the duty of the outpost police to patrol roads and villages and to report all matters of local interest to the Sub-Inspector. They do not possess the right of investigating offences.

Besides the regular Police there is the old Indian village Police organisation, on whom the regular Police are dependent for information, and assistance. Every Police Station comprises within its jurisdiction a number of villages, for each of which there is a Chokidar or watchman. This official, whether working under orders of the village headman or directly under the regular Police officers, must report crime and aid the execution of justice. He is remunerated in different ways in different provinces, *e.g.* by fees, or by monthly payments, or by grants of free lands. Besides reporting crime, the Chokidar must keep a watch on suspicious characters, and give general aid and information to the Police.

In addition to the regular Police in the rural areas and the village organisation, there are portions of the Police force in towns, organised more or less on the same lines. In the Presidency towns, however, and in Rangoon, the Police are organised as a separate force, under a Commissioner in each case, who is aided by a staff of European and Indian subordinate officers and constables. The Railway Police is another independent organisation, which, however, works in co-operation with the District Police. These last are, as a rule, concerned with the maintenance of watch and ward and order over railway property. The Railway Police charges are, as far as possible, coterminous with the territorial jurisdiction of the local Governments, the force in each province being under a Deputy Inspector-General.

In addition to all these organisations there is the now famous Criminal Investigation Department, or the C. I. D. as it is more generally known. It is mainly concerned with political inquiries, sedition cases, and crimes which are too important to be left in the hands of the district police. This department originated from the necessity to investigate those secret crimes associated with the Thugs in India. Upto 1904 there was a separate Thuggee and Dacoitee Department ; and, though the Thugs were wiped off the face of the earth long before that date, the duties of this department continued to be described by the title which suggested their principal original occupation before 1863. From 1863 to 1904 this department was concerned with the suppression of armed robbery in the dominions of the Nizam and of the Native States in Central India and Rajputana. In the latter year this department was abolished and replaced by a Central Criminal Intelligence Department under a Director. The duties of this department, with its provincial counterparts, is to collect and provide a systematic and full information as to important and organised crime, and to train up a small staff of detectives for investigation of crimes, authors of which are not easily ascertainable by the ordinary

Police. This department has of late earned an unpleasant notoriety by allowing its zeal to outrun its discretion in the task of securing the safety of the state and its important officers against the menace of the Anarchists, who carried on their activities in parts of India with the object of overturning the whole machine of the present Government by assassinating isolated officials. From being a protector of the State and its officers and a help to the citizens, this department has tended in every country, organised like India, to be a terror of the people, who will never aid men suspected not only of discovering criminals, but also of manufacturing crimes and creating criminals. The State may protect and maintain, but the people will distrust, an organisation, which, instituted to unearth unknown criminals, is often unable to fulfil that duty, but tries to shield its inability or incompetence by unnecessary and unfounded accusations to prove its vigilance and to earn its promotions, reckless of the mischief it causes between the rulers and the ruled. Those in power may be entirely innocent of any complicity with or encouragement of this side of the work of the C. I. D.; but, after the revelations of some of the anarchist trials in Bengal, it is hard to believe that the C. I. D. is an unmixed blessing to the people or to the State.

XV. Jails.

Jail administration in India is regulated by the Prisons Act of 1894, and by the rules issued under it by the Government of India and the local Governments. The Indian jails must provide accommodation for prisoners sentenced to penal servitude, rigorous imprisonment or simple imprisonment, as well as for persons awaiting trial, and for civil prisoners. The Indian jails are accordingly divided into three classes, *viz*,

the large central jails for convicts sentenced to more than one year's imprisonment; the district jails at the headquarters of each district; and subsidiary jails and lock-ups for prisoners awaiting trial, and for short term imprisonment. The jail department in each province is under the control of an Inspector-General, who is an officer of the Medical Service, and the superintendents of certain jails are usually recruited from that service. The district jail is in the charge of the civil surgeon, and is frequently inspected by the district officer. In large central jails there are, under the superintendents, officers to supervise the jail manufactures; and in all central and district jails there are one or more subordinate medical officers. The executive staff consists of jailors, warders, and convict petty officers.

As regards youthful offenders, *i. e.*, those under 15 years of age, the law provides alternatives to imprisonment, which consist in detention in a Reformatory School for a period of three to seven years, but not beyond the age of 18; whipping by way of discipline; discharge after admonition; and delivery to parent or guardian on the latter executing a bond for the good behaviour of the child. The Reformatory Schools are administered, since 1899, by the Education department, and the authorities are directed to improve the industrial education of the inmates, to help the boys to obtain employment after leaving school, and as far as possible to keep a watch on their career. The question of the treatment of young adult prisoners has in recent years attracted the attention of many people. Prisoners over fifteen cannot be admitted into the Reformatory Schools, and yet the ordinary jail is hardly a fit place for such juvenile offenders. Government are therefore considering schemes to treat the "young adults" on the lines followed at Borstal; and considerable progress has been made in this direction. In 1905, a special class was created at the Dharwar jail for this kind of prisoners; in Bengal in 1909, separate jails were set aside for adolescents. But the people at large do not understand that they have a

duty towards prisoners, and little progress has been made so far in the formation of Prisoners' Aid Societies. A Commission of inquiry was appointed in 1919 to report on the whole system of prison administration in India. It advocated many Reforms, but for the present they have not been introduced owing to financial stringency.

Besides imprisonment, the Indian Criminal Law provides another punishment, *viz.*, Transportation. At the present time the only penal settlement for this purpose is Port Blair in the Andaman.

CHAPTER VIII.

The Church in India.

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PART X.

Ecclesiastical Establishment.

115. (1) The Bishops of Calcutta, Madras and Bombay have and may exercise, within their respective dioceses such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good Government of the ministers of the Church of England therein, as His Majesty may, by letters patent, direct. His Majesty may also by letters patent make such provision as may be deemed expedient for the exercise of the Episcopal functions and ecclesiastical jurisdiction of the bishop during a vacancy of any of the said sees or the absence of the bishop thereof.

(2) The Bishop of Calcutta is the Metropolitan Bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury, and as metropolitan shall have, enjoy, and exercise such ecclesiastical jurisdiction and functions as His Majesty may by letters patent direct. His Majesty may also by letters patent, make such provision as may be deemed expedient for the exercise of such jurisdiction and functions during a vacancy of the See of Calcutta or the absence of the bishop.

(3) Each of the bishops of Madras and Bombay is subject to the Bishop of Calcutta as such Metropolitan, and must at the time of his appointment to his bishopric, or at the time of his consecration as bishop, take an oath of obedience to the Bishop of Calcutta, in such manner as His Majesty, by letters patent, may be pleased to direct.

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

(5) Nothing in this Act or in any such letters patent as aforesaid shall prevent any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the bishop thereof.

116. [*Power to admit to holy orders.*—Rep. by Sch. II of 6 & 7, Geo. 5, Ch. 37.

117. If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras or Bombay, being at the time of his appointment

resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorising and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

118. (1) The bishops of Calcutta, Madras and Bombay are appointed by His Majesty by letters patent and the archdeacons of those dioceses by their respective diocesan bishops, and there may be paid to them, or to any of them, out of the revenues of India, such salaries and allowances as may be fixed by the Secretary of State in Council; but any power of alteration under this enactment shall not be exercised so as to impose any additional charges on the revenues of India.

(2) The remuneration fixed for a bishop or archdeacon under this section shall commence on his taking upon himself the execution of his office, and be the whole profit or advantage which he shall enjoy from his office during his continuance therein, and continue so long as he exercises the functions of his office.

(3) There shall be paid out of the revenues of India the expenses of visitations of the said bishops, but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

119. (1) If the Bishop of Calcutta dies during his voyage to India for the purpose of taking upon himself the execution of his office, or if the Bishop of Calcutta, Madras or Bombay dies within six months after his arrival there for that purpose, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

(2) If the Bishop of Calcutta, Madras or Bombay dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

120. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Secretary of State, grant, out of the revenues of India, to any Bishop of Calcutta a pension not exceeding fifteen hundred pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay or archdeacon for ten years, or one thousand pounds per annum if he has resided in India as Bishop of Calcutta Madras or Bombay for seven years, or seven hundred and fifty pounds per annum if he has resided in

India as Bishop of Calcutta Madras or Bombay for five years, or to any Bishop of Madras or Bombay a pension not exceeding eight hundred pounds per annum if he has resided in India as such bishop for fifteen years.

121. His Majesty may make such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay on furlough or medical certificate as seem to His Majesty expedient.

122. (1) Two members of the establishment of Chaplains maintained in each of the presidencies of Bengal, Madras and Bombay must always be ministers of the Church of Scotland, and shall be entitled to have, out of the revenues of India, such salary as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

123. Nothing in this Act shall prevent the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion or community of Christians, not being of the Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

COMMENTS.

Se. 115-123 (both inclusive.)

The East India Company were originally opposed to any settlement of Missionaries in India, partly because they feared the action of the missionaries would give offence to the native population, by their proseletising zeal, and partly because they regarded missionaries as the forerunners of all insubordination among their subjects. It was not till 1813 that permission was first given by the Charter Act of that year for missionaries to settle in India, and to carry on such educational and other activities as they chose. By the same

Act three bishops were appointed for the cities of Calcutta, Madras and Bombay ; and these provisions were confirmed by the Charter Act of 1833. The present Act retains those provisions. Hence the bishops only of the three Presidency Towns are appointed under an Act of Parliament, the remaining bishops for the Dioceses, of Lahore or Nagpur, for instance are appointed by letters patent,

In the ordinary acceptance of the term, there is no established Church in India. An Ecclesiastical Establishment is maintained for providing religious ministrations, primarily, to British troops, secondarily to the European civil officials of Government and their families. Seven out of the eleven **Anglican Bishops** in India are officers of the Establishment, though their episcopal jurisdiction is much wider than the limits of the Ecclesiastical Establishment. The stipends of the three Presidency Bishops are paid entirely by Government, and they hold an official status which is clearly defined. The Bishops of Lahore, Lucknow, Nagpur, and Rangoon draw from Government the stipends of Senior Chaplains only; but their episcopal rank and territorial titles are officially recognised. The Bishops of Chota Nagpur, Tinnevely, Madura, Travancore, Cochin, Dornakal and Assam are not on the Establishment. The new Bishopric of Assam was created in 1915. In its relations with Government it is subordinate to the see of Calcutta. But the maintenance of the Bishopric is met entirely from voluntary funds.

The **ecclesiastical establishment** includes four denominations—Anglican, Scottish, Roman Catholic and Wesleyan. Of these, the first two enjoy a distinctive position: in that the Chaplains of those denominations (and, in the case of the first-named, the Bishops) are individually appointed by the Secretary of State and rank as gazetted officers of Government. Throughout the Indian Empire there are 134 Anglican and 18 Church of Scotland chaplains whose appointments have been confirmed. The authorities in India of the Roman Catholic church receive block-grants from Government for

the provision of clergy to minister to troops and others belonging to their respective denominations. The Wesleyan Methodist Church has a staff of military chaplains in India who receive a fixed salary from Government, and 25 chaplains working on a capitation basis of payment by Government. Churches of all four denominations may be built, furnished and repaired, wholly or partly at Government expense.

In the Anglican Communion a movement towards **Synodical Government** was making great progress, when, in the course of the year 1914, serious legal difficulties were encountered. The Bishops were advised that their relations with Canterbury and the Crown precluded the establishment of synods on the basis adopted by the Anglican Church in America, Japan, South Africa, and other countries, where it is not established by the State. It is stated that in course of time those relations may be modified so as to admit of the establishment of synodical government in India. Meanwhile Diocesan Councils are being adopted as a make-shift measure. These Councils possess synodical characteristics, but are devoid of any coercive power.

So far as the European and Anglo-Indian communities are concerned, the activities of the Church are not confined to public worship and pastoral functions. The education of the children of those communities is very largely in the hands of the Christian denominations. There are a few institutions such as the La Martiniere School, on a non-denominational basis; but they are exceptional. In all the large centres there exist schools of various grades as well as orphanages, for the education of Europeans and Anglo-Indians under the control of various Christian bodies. The Roman Catholic Church is honourably distinguished by much activity and financial generosity in this respect. Her schools are to be found throughout the length and breadth of the Indian Empire; and they maintain a high standard of efficiency. The Anglican Church comes next, and the American Methodists have established some excellent schools in the larger

hill stations. The presbyterians are also well-represented in the field, particularly by the admirable institution for destitute children at Kylimpong, near Darjeeling. Schools of all denominations receive liberal grants in aid from Government, and are regularly inspected by the Education Departments of the various provinces. Thanks to the free operation of the denominational principle and its frank recognition by Government, there is no religious difficulty in the schools of the European and Anglo-Indian communities."

The maintenance, at public expence, of an Established Church, whose ministrations serve hardly one in 10,000 souls in India, while the corresponding activities of other more important religions in the country go all but unrecognised at the hands of the state, is a feature of the present administration that can in no way be commended. Its weakness is recognised by the present Act having specifically withdrawn the Ecclesiastical charges from the competence of the Indian Legislative Assembly in voting the Budget; for it is an indirect admission of the unsuitability of the charge. It would be but a mere act of justice if the Government in India becomes entirely secular.

APPENDIX

PART XI.

Offences, Procedure and Penalties.

124. If any person holding office under the Crown in India does any of the following things, that is to say:—

- (1) if he oppresses any British subject within his jurisdiction or in the exercise of his authority; or.
- (2) if, except in case of necessity, the burden of proving which shall be on him, he wilfully disobeys, or wilfully omits, forbears or neglects to execute, any orders or instructions of the Secretary of State; or
- (3) if he is guilty of any wilful breach of the trust and duty of his office; or
- (4) if, being the Governor-General, or a governor, lieutenant-governor or chief commissioner, or a member of the Executive Council of the Governor-General or of a governor or lieutenant-governor, or being a minister appointed under this Act, or being a person employed or concerned in the collection of revenue or the administration of justice, he is concerned in, or has any dealings or transactions by way of trade or business in any part of India, for the benefit either of himself or of any other person, otherwise than as a shareholder in any joint-stock company or trading corporation; or
- (5) if he demands, accepts or receives, by himself or another, in the discharge of his office, any gift, gratuity or reward, pecuniary or otherwise, or any promise of the same, except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents, and except in the case of fees paid or payable to barristers, physicians, surgeons and chaplains in the way of their respective professions,

he shall be guilty of a misdemeanour; and if he is convicted of having demanded, accepted or received any such gift, gratuity or reward, the same, or the full value thereof shall be forfeited to the Crown, and the court may order that the gift, gratuity or reward, or any part thereof, be restored to the person who gave it, or be given to the prosecutor or informer, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct:—

Provided that notwithstanding anything in this Act, if any member of the Governor-General's Executive Council or any member of any local Government

was at the time of his appointment concerned or engaged in any trade or business, he may during the term of his office with the sanction in writing of the Governor-General, or in the case of ministers, of the governor of the province, and in any case subject to such general conditions and restrictions as the Governor-General in Council may prescribe, retain his concern or interest in that trade or business, but shall not, during that term, take part in the direction or management of that trade or business.

125. (1) If any European British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a local Government, by himself or another :—

(a) lends any money or other valuable thing to any prince or chief in India ; or

(b) is concerned in lending money to, or raising or procuring money for, any such prince or chief, or becomes security for the repayment of any such money; or

(c) lends any money or other valuable thing to any other person for the purpose of being lent to such prince or chief; or

(d) takes, holds, or is concerned in any bond, note or other security granted by any such prince or chief for the repayment of any loan or money hereinbefore referred to,

he shall be guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held or enjoyed, either directly or indirectly, for the use and benefit of any European British subject, contrary to the intent of this section, shall be void.

126. (1) If any person carries on, mediately or immediately, any illicit correspondence, dangerous to the peace or safety of any part of British India, with any prince, chief, land-holder or other person having authority in India, or with the commander, governor, or president of any foreign European settlement in India, or any correspondence, contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or a Governor in Council, he shall be guilty of a misdemeanour; and the Governor-General or governor, may issue a warrant for securing and detaining in custody any person suspected of carrying on any such correspondence.

(2) If on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council, there appear reasonable grounds for the charge, the Governor-General or Governor may commit the person suspected or accused to safe custody, and shall, within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge on which he is committed.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence shall be examined and cross-examined on oath in the presence of the person charged and their depositions and examination shall be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge and for continuing the confinement, the person charged shall remain in custody until he is brought to trial in India or sent to England for trial.

(6) All such examinations and proceedings, or attested copies thereof under the seal of the high court, shall be sent to the Secretary of State as soon as may be, in order to their being produced in evidence on the trial of the person charged in the event of his being sent for trial to England.

(7) If any such person is to be sent to England, the Governor-General or governor, as the case may be, shall cause him to be sent at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he shall be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section shall be received as evidence in all courts of law, subject to any just exceptions as to the competency of the witnesses.

127 (1) If any person holding office under the Crown in India commits any offence under this Act, or any offence against any person within his jurisdiction or subject to his authority, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

(2) Every British subject shall be amenable to all courts of justice in the United Kingdom, of competent jurisdiction to try offences committed in India, for any offence committed within India and outside British India, as if the offence had been committed within British India.

128. Every prosecution before a high court in British India in respect of any offence referred to in the last foregoing section must be commenced within six years after the commission of the offence.

129. If any person commits any offence referred to in this Act he shall be liable to such fine or imprisonment or both as the court thinks fit, and shall be liable, at the discretion of the court, to be adjudged to be incapable of serving the Crown in India in any office, civil or military; and, if he is convicted in British India by a high court, the court may order that he be sent to Great Britain.

CHAPTER IX.

LOCAL GOVERNMENT IN INDIA.

I. The Village System.

The subject of local government, though not introduced in the main Act, is yet too important to be left out in any work on Indian administration. The principle of local Government is far too deeply established on the Indian mind to need any historical sketch. In common with the other offshoots of the Aryan race, the Hindus had a form of free local self-government long before they had a centralised state. Every village in ancient India was an autonomous political unit. The officers of the central government, when it came into existence, were content to accept the village collectively as a unit for such of their administrative duties as had reference to the inhabitants of the locality. It was of such villages that Sir Henry Maine speaks in his village communities, which endured in spite of wars and changes of dynasties, in spite of every revolution in the principles of government.

But this old-time independence and autonomy is a thing of the past. The village tribunal of local elders no longer distributes justice, for are there not the King's Courts of Law? The village chaukidar and his assistants are no longer the amateur detectives who traced criminals by their foot-prints and professional watch keepers—who went on crying 'Khabardar' at every hour of the night, for has not the State established a new police organisation? The village council no longer estimates and assigns the local burdens, for the settlement officer has learnt the value of individual assessment. The powers which made the village organisation effective and efficient have been destroyed by the roads and the railways which would tolerate no isolation, however inoffensive, which would respect no passivity however ancient.

And yet the village remains—even to-day—the first unit of administration. True, the principal village functionaries, the

headman, the accountant, the watchman, have become in ever increasing numbers the subsidised officials of a central government. Their functions in the administration of the village have also been altered by law. Their natural, traditional, independence has been stultified by artificial organisations—such as the Union Punchayets of Madras—which are formed to discharge specific duties. Notwithstanding all this the village endures as a unit of administration.

Even in the “severalty or Raiyatwari” village, where the revenue is collected from individual cultivators, and where there is no joint responsibility of the village as a whole, government is vested in the Patel or Reddi, who is responsible for law and order, and who collects the government dues. In the joint or landlord village a certain amount of collective responsibility still remains. The village site is owned by the proprietary body, where permission is necessary for the settlement in the village of artisans, traders, or others. The waste land belongs to the village, and, when required for cultivation, is partitioned among the share-holders. The government of such a village, used to be by a punchayet.

Desiring to rehabilitate this ancient Indian institution of Local Self-Government the Royal Commission on Decentralisation recommended:—

“While, therefore, we desire the development of a punchayet system, and consider that the objections urged thereto are far from insurmountable, we recognise that such a system can only be gradually and tentatively applied, and that it is impossible to suggest any uniform and definite method of procedure. We think that a commencement should be made by giving certain limited powers to punchayets in those villages in which circumstances are most favourable by reason of homogeneous conditions, natural intelligence, and freedom from internal feuds. These powers might be increased

gradually as results warrant; and with success here, it will become easier to apply the system in other villages.

In accordance with this recommendation an Act was passed in 1912 to provide for the establishment of the punchayets in the Punjab. But in that province, the ancient home of the Indo-Aryans, the ideal of village self-government has never been abandoned. Custom has vested the village organisation there—even under the present regime of centralisation—with a degree of independence which is almost unknown in other provinces.

For the country as a whole, the Government of India reaffirmed the policy by their Resolution of May 28, 1915:—

“Where any practicable scheme can be marked out in co-operation with the people concerned, full experiment must be made on the lines approved by the local government or the administration concerned ”

The Joint Report on Constitutional Reforms observes, on this topic:—

“It is recognised that the prospect of successfully developing Punchayets must depend very largely on local conditions, and that the functions and powers to be allotted to them must vary accordingly; but where the system proves a success, it is contemplated that they might be endowed with civil and criminal jurisdiction in petty cases, some administrative powers as regards sanitation and education, and permissive powers of imposing local rates.”
(para 196 of the Report).

They leave it, however, to the reformed provincial governments to work out the details of a resuscitated village system by a modernised form of the village punchayet; and, up-to-date, the results have been thus summarised:—

“In the Punjab, U. P. and Bihar experimental measures creating village councils have been set afoot; but in general, the new councils or punchayets have not won universal approval. The explanation may be that the new village councillors are unwilling to tax themselves even for projects of strictly local utility, or that the powers and functions even now available to the village elders are by no means so extensive or important as to tempt the best local talent to shoulder the task of village improvement.”

II Rural Local Self-Government.

Institutions of rural local self-government on a scale larger than that of a village are of much recent creation. Before 1858 there were no such institutions, though there were some semi-voluntary funds in Madras and Bombay for local improvements, while in Bengal and the United Provinces there were consultative committees to assist the district officers in the use of funds for local schools, roads, and dispensaries. In 1865 Madras led the way by a law to impose cesses on land for such purposes, and Bombay followed the lead in 1869. Two years later came the financial decentralisation scheme of Lord Mayo; and, in consequence, various Acts were passed in the provinces for the levy of rates and the creation of local bodies—here and there with some tinge of the elective principle—to administer those funds. Under Lord Ripon's Resolution of 1882 the existing local committees came to be replaced by local boards extending all over the country. The principle observed in the creation of these boards was that the lowest administrative unit was to be small enough to secure local knowledge and interest on the part of each member of the board; the various minor boards of the district were to be

under the control of a general District Board, and were to send delegates to a District Council for the discussion of measures common to all. The non-official element was to preponderate, and the elective principle was to be cautiously recognised. The resources as well as the responsibilities of the boards should be increased by transferring to them items of provincial revenue and expenditure.

In view of the fact that only 10 per cent. of the population of British India lives in towns, municipal administration, however efficient, cannot affect in any large degree the majority of the people. Particular importance, therefore, attaches in India to the working and constitution of the District Boards; which perform in rural areas those functions which in urban areas are assigned to the municipalities. In almost every district of British India, save the province of Assam, there is a board, subordinate to which are two or more sub-district boards; while in Bengal, Madras, and Bihar and Orissa there are also union committees. The total number of district boards throughout India at large amounts to some 200, while subordinate to them are 532 sub-district boards with more than 1,000 union committees. Leaving aside the union committees, the members of the boards numbered nearly 13,000 in 1919-20, of whom 57 per cent. were elected. During the period under review, as we shall notice, the tendency has been to increase the elected members of the district boards at the expense of the nominated and the official members. In forming a conception of the nature of these boards it is to be remembered that they are practically manned by Indians, who constitute 95 per cent. of the whole membership. Further, they are predominantly non-official, for only 17 per cent. of the total membership of all boards consists of officials of any kind. The total income of the boards in 1919, amounted to Rs. 929 lakhs (£6 millions), the average income of each district board together with its subordinate boards being Rs. 5·2 lakhs (£34,000). The most important item of revenue is provincial rates, which represent a proportion of the total income vary-

ing from 21 per cent. in the Central Provinces to 51 per cent. in Bengal. Other sources of their income are:—

- Local rates;
- Education fees and contributions;
- Medical fees and contributions;
- Railways, Irrigation and Navigation receipts;
- Police dues; (pounds and ferries);
- Civil Works and contributions; and
- Miscellaneous receipts from land revenue, interest, public gardens, fairs, exhibitions, &c.

The income is mainly expended upon civil works, such as roads and bridges, the other principal objects of expenditure being medical and sanitary works, and, during the period under review, above all education.

The principal normal functions of these boards are the maintenance and improvement of roads and other communications, education—especially in its primary stages, upkeep of medical institutions, vaccination, sanitation, veterinary work, the charges of pounds and ferries. They may also be called upon to devote their funds to famine relief.

Their principal heads of expenditure are:—

- Education;
- Medical and sanitation works;
- Civil works including buildings, water-supply, communications and drainage;
- General Administration; and
- Miscellaneous, which includes cattle pounds, veterinary work, public gardens, fairs and exhibitions.

III. Municipalities.

The towns of India, now called Municipalities, have had a relatively short, but a fairly prosperous, history. The Presidency towns of Bombay, Calcutta and Madras had received some form of local self-government as early as 1726. In the country at large, no new form of local Municipal institutions was tried before 1842. In that year Bengal got an Act on the subject, but it was found to be useless—and was followed in 1850 by another Act for the whole of British India. Under this Act a number of Municipalities was established, and commissioners were appointed to administer their affairs with power to levy some taxes. Since, however, the commissioners were all nominated, the Act effected no great progress from the point of view of Self-government. With the introduction of a scheme for the decentralisation of finances in 1870 the problem of extending self-governing institutions became more prominent, and between 1871 and 1874 new Municipal Acts were passed extending the elective principle.

It was not, however, till the days of Lord Ripon that local government in India was constituted on a more scientific basis—whether in the town or in the country:—

“It is not primarily with a view to improvement in administration that this measure is put forward and supported. **It is chiefly desirable as an instrument of political and popular education.** His Excellency in Council has himself no doubt that in course of time, as local knowledge and local interest are brought to bear more freely upon local administration, improved efficiency will in fact follow.”

Lord Ripon's Government were quite aware, to quote the same resolution,—that:—

“At starting, there will be doubtless many failures, calculated to discourage exaggerated hopes, and even in some cases to cast apparent discredit, upon the

practice of self-government itself. If, however, the officers of Government only set themselves, as the Governor-General-in-Council believes they will, to foster sedulously the small beginnings of independent life; if they will accept loyally and as their own the policy of the Government, and if they come to realise that the system really opens to them a fairer field for the exercise of administrative tact and directive energy than the more autocratic system which it supersedes, then it may be hoped that the period of failures will be short, and that real and substantial progress would very soon become manifest."

In accordance with the policy thus laid down, Acts were passed by the various local governments, which defined and extended the powers and functions of local self-governing bodies.

IV. Presidency Towns.

Taking the Municipalities—the three Presidency Municipalities of Calcutta, Madras and Bombay are the most important. Their constitution and functions vary considerably. Thus in Calcutta the Municipal administration is entrusted to the Corporation, consisting—under the Act of 1899—of a chairman nominated by the local government, and 50 Commissioners. Of these 25 are elected at triennial ward elections, while the remaining 25 are appointed as follows:—

The Bengal Chamber of Commerce	...	...	...	4
The Calcutta Trades Association	...	...	...	4
The Port Commissioners	...	...	...	2
The Government of Bengal	...	...	...	15
				<hr/>
				25

Besides the Corporation there is the General Committee, consisting of the Chairman and 12 Commissioners, 4 of whom are elected by the ward Commissioners, 4 by the other Commissioners, and 4 nominated by the local Government. The entire executive power is vested in the Chairman subject to the approval or sanction of the Corporation, or the General Committee. The Corporation fixes the rates of taxation and has other general functions of the kind. The General Committee is a sort-of a buffer between the Executive and the Legislative. It deals with those matters which the Corporation as a whole cannot discuss, and which are yet too important to be left to the Chairman alone. The Government of Bengal, also, has the power to command the Corporation to take action under certain circumstances, while its sanction is necessary for undertaking large projects.

In Bombay the Municipal Corporation dates from 1872, and its present form is regulated by the Act of 1888 as amended by the Act of 1922. It consists of 106 councillors, 76 of whom are elected by the wards. The Fellows of the Bombay University elect 1 and 2 more are elected by the Bombay and Indian Chamber of Commerce, while one member is elected by the Bombay Mill-owners' Association. The remaining 16 are nominated by the Government and 10 are co-opted by the councillors. Judging from this constitution, the Corporation of Bombay is the most liberal and may well be envied by other towns. The general municipal government is vested in the Corporation, while the ordinary business is transacted by a Standing Committee of 12 Councillors, of whom 8 are appointed by the Corporation and 4 by the Government. The President of the Corporation is elected by that body, but is not, like the Chairman of the Calcutta Corporation, an Executive officer. The chief executive authority is the Municipal Commissioner, who is appointed by the Government, usually an I. C. S.-but is removable by a vote of the Corporation.

In Madras the last Act regulating the Corporation was passed in 1904. Under this Act the number of Municipal Com-

missioners consists of 36 besides the President. Of these 20 may be elected at the divisional election, 3 are nominated by the Madras Chamber of Commerce, and 3 by the Madras Trades Association. The remaining 10 are nominated—2 each by such associations, corporate bodies, or classes of persons as the local government might direct. The President is nominated by the Government, and is the sole executive authority but removable by a vote of 28 Commissioners. A Standing Committee of the President and 8 other Commissioners is mainly concerned with finance and building questions.

Of these constitutions that of Madras is by far the least liberal, while that of Bombay with an elective majority, and elective chairman, and only one nominated official executive officer, with large discretion in administration and large powers of taxation within the limit of the law—the most advanced.

V. Mofussil Municipalities.

The total number of mofussil municipalities has altered very little in the last 25 years. New municipalities have been formed from time to time, but some also have been removed from the list. In fact between 1902-12 there was a marked decrease, the number in 1911-12 being actually less than 30 years before. This was due to reduction to "notified areas" of a large number of the smaller municipalities in the Punjab and the United Provinces. The "notified areas" are small towns not fit for full municipal institutions, but to which parts of the Municipal Acts are applied, their affairs being administered by nominated committees. Taking the municipalities as a whole, the number of elected members in 1911-12 was rather more than half, while in 1901-2 it was slightly less than half.

At the present time 1919-20 there are some 739 municipalities containing under 18 million people resident within their

limits. Of these municipalities roughly 546 have a population of less than 20,000 persons and the remainder a population of 20,000 and over. As compared with the total population of particular provinces, the population resident within municipal limits is largest in Bombay, where it amounts to 17 per cent., and is smallest in Assam where it amounts to only 2 per cent. In other provinces it varies from 3 to 9 per cent. of the total population. Turning to the composition of the Municipalities, considerably more than half of the total members are elected. Ex-officio members are roughly 12 per cent., and nominated 30 per cent. Elected members are almost everywhere in a majority. Taking all municipalities together, the non-officials outnumber the officials by nearly five to one. The functions of municipalities are classed under the heads of Public Safety, Health, Convenience and Instruction. For the discharge of these responsibilities, there is a municipal income of £ 11.4 millions, nearly two-thirds of which is derived from taxation, and the remainder from municipal property, contributions from provincial revenues, and miscellaneous sources. Generally speaking, the income of municipalities is small, the four cities of Calcutta, Bombay, Madras and Rangoon together providing nearly 38 per cent. of the total. The average income of all municipalities other than the four mentioned above is nearly £ 10,000. The total expenditure of municipalities excluding that debited to the head "extraordinary and debt" amounted in 1919-20 to £ 11.3 millions. The heaviest items of this expenditure come under the heads of "Conservancy" and "Public Works" which amount to 17 per cent. and 14 per cent. respectively. "Water-supply" comes to 9 per cent. "Drainage" roughly to 6 per cent. and "Education" to no more than 8.1 per cent. In some localities the expenditure on education is considerably in excess of the average. In the Bombay Presidency, excluding Bombay City, for example, the expenditure on education amounts to more than 18 per cent. of the total funds, while in the Central Provinces and Berar it is over 15 per cent.

The control of the Government is exercised in a variety of ways. Thus (1) Municipalities cannot borrow without the sanction of the local Government and beyond certain limits. (2) Municipal budgets, and changes in Municipal taxation must also obtain the previous approval of the local Government or of a Divisional Commissioner. (3) Government may provide for the performance of any duty which the Commissioners neglect, and, (4) may suspend them in case of default, incompetence or abuse of power. (5) The sanction of the Government is required for the appointment of certain officers like the Health Officer or the Engineer.*

* It was in accordance with these powers that, during the height of the Non-co-operation agitation, the Government of Bombay suspended in 1922 the Municipalities of Ahmedabad, Surat and Nadiad. And when in 1923 the new Bombay Municipal corporation passed a resolution boycotting the use of British goods in the Municipal works, a strong rumour had got afloat that the Presidency Municipality would itself be suspended. No such eventuality has, however, occurred so far.

The following table gives information as to the constitution of municipal committees, taxation, &c., in the chief provinces in 1919-20:—

	Population within Municipal Limits.	Number of Municipalities.	Total Number of Members.	By Qualification.		By Employment.		By Race.		Incidence of Municipal Taxation per head.			
				Ex-Officio.	Nomi-nated.	Elected.	Officials.	Non-Officials.	Euro-peans.		Indians.		
<i>Presidency Towns.</i>													
Calcutta	861,501	1	50	...	25	25	3	47	18	32	1	3	10
Bombay	979,445	1	72	...	16	56	6	66	17	55	1	12	9
Madras	518,660	1	49	...	19	30	2	47	10	39	0	10	4
Rangoon	284,935	1	25	1	6	18	2	23	12	13	1	5	2
<i>District Municipalities.</i>													
Bengal	1,973,799	114	1,593	81	518	994	169	1,424	123	1,470	0	5	9
Bihar and Orissa	1,199,318	58	817	135	198	484	141	676	87	730	0	3	2
Assam	135,637	25	250	40	87	123	48	202	29	221	0	5	7
Bombay and Sind	2,381,064	157	2,311	311	750	1,250	377	1,934	81	2,230	0	7	2
Madras	2,293,948	73	1,682	98	316	668	138	944	68	1,014	0	4	0
United Provinces	2,984,773	84	1,055	52	105	898	76	979	72	979	0	4	8
Punjab	1,626,506	101	1,178	221	352	605	241	(a) 936	77	(b) 1,099	0	7	0
N. W. Frontier Province	141,928	6	117	34	83	...	34	83	15	102	0	11	2
Central Provinces and Berar	921,257	59	816	21	281	544	144	672	43	773	0	5	9
Burma	706,929	46	589	172	295	122	192	397	105	484	0	5	8

(a) There was 1 vacancy during 1919-20.

(b) There were 2 vacancies during 1919-20.

VI. Municipal Functions and Finance.

Municipal functions are classified under the heads of public safety, public health, public convenience and public instruction. Under these four heads the duties of the municipalities are many and varied. The chief of these are;—(a) the construction, maintenance, and lighting of streets and roads; (b) the provision and up-keep of public and Municipal buildings; (c) preservation of public health by medical relief, vaccination, sanitation, drainage, water-supply and measures against epidemics; (d) public instruction, chiefly of an elementary description.

Municipal revenues are derived from four main sources: taxation, municipal property, Government subventions and public borrowing. Of these the last is permitted under certain restrictions as to the previous sanction of the Government, specific security to the lender and the amount. Generally speaking, excluding the Presidency towns, municipalities borrow from the Government. Municipal loans, therefore, though not unknown in India, cannot be said to be of the same importance here as they are in some European countries. In those countries, the idea of Municipal trading has been carried so far that the municipalities supply not only light and water, but also bread and meat, wine and milk, amusement in the dancing house, the race-course, the lottery office and even the municipal restaurants. They build houses for their citizens on land owned by themselves, cultivate fields for procuring the raw material, work forests and mines for their profit, own baths and spas, hotels and boarding-houses, serve as tourist agencies, receive, and invest their money, act as educator, doctor and research student. In India on the other hand the utmost activity of the municipalities is confined to providing indifferently clean and irregularly copious water and some slight drainage works. While the western municipalities need large funds which they procure without hesitation by borrowing, to carry on their vast and multifarious activities, Indian town governments whenever they desire to borrow a small loan are viewed with suspicion by the Government.

Being restricted in borrowing, they cannot have the same extent of municipal property which is so common in the west. Their utmost possessions are a market, a few school buildings, a slaughter-house, and in rare cases profitable water-works or a town-hall. Picture-galleries and museums, zoological gardens and libraries, tram-lines or lighting plant, or theatres are all conspicuous by their absence or rarity in India as municipal undertakings. Hence the item of their revenues from their own property is also very insignificant.

Of the two remaining items Government subventions are as degrading to the municipalities as they are unprofitable to the central government. And yet they are by no means an insignificant item. For the municipalities to be dependent on Government aid is to sacrifice their independence. For such aid will not of necessity be granted without humiliating conditions. Not that there is no room for the subvention from the central authority. Undertakings like the provision of secondary education—or even compulsory primary education—which are of universal importance—may fitly be maintained at a high level by central assistance, as also the Police force. But in such cases the aid would be claimed and obtained under conditions prescribed once for all for every local body without discrimination. Such aid is both legitimate and necessary. But the aid which is given to each municipality on the merits of each case necessarily results in making it weaker and more dependent every day. The restriction in practice upon Indian municipalities as regards borrowing in the public market may have a political justification in the expediency of maintaining unimpaired the credit of the central Government. But it does result also in a complete and perpetual tutelage of the municipality—so hostile to the development of really beneficent civic spirit and civic pride.

As regards taxes, tolls and fees the most important are:—

- (a) Taxes on arts, trades, callings, professions etc.
- (b) Taxes on buildings, lands and holdings.

- (c) Taxes on water; drainage, sewage, conservancy etc.
- (d) Taxes on vehicles, boats, palanquins, animals etc.
- (e) Taxes on property,
- (f) Taxes on private menials and domestic servants.
- (g) Taxes on private markets.
- (h) Octroi on animals, or goods or both within town limits.
- (i) Tolls on vehicles and animals entering the town limits.
- (j) Fees on registration of cattle sold within town limits.

The resolution of the Government of India, dated 28th April 1915, from which the above have been taken goes on to add, "The taxes provided for in the acts vary, however, in the different provinces, and not all these taxes are actually levied in any one province. Any tax, other than those specified in the acts, which is proposed to be levied, ordinarily requires, and should continue to require, the sanction of the Governor-General in Council. The most important taxes now in force are octroi duties, levied principally in Bombay, the United Provinces, the Punjab, the Central Provinces, the North West Frontier Province, and the tax on houses and lands which holds the chief place in other provinces as well as in Bombay City." The right of taxation within municipal limits is granted subject to the approval and sanction of the Government of India in every case of a new tax.

Of the taxes the octroi duties are most important wherever they obtain. They have their own merits and defects. They are familiar to the people, are likely to grow with the prosperity of the town, and, being collected in small amounts, are not felt as burdens. On the other hand they undoubtedly

furnish occasion for fraud and oppression, are very expensive to collect, and, lastly, they are likely to degenerate into mere transit duties and so obstruct trade, inspite of the provisions for refunds. Attempts have been made to substitute these duties by some form of direct taxation or by a terminal tax in the United Provinces. The Government of India have approved these attempts on condition that the rate of such a terminal tax is lower, that there are conditions which make such a tax specially inevitable, and that it is meant to effect the transition from a system of indirect to that of direct taxation. Where the octroi tax prevails precautions are taken to confine the tax only to those articles actually consumed in the town. The articles so taxed are generally commodities of local consumption *e. g.* the articles of food. Taxes on land and houses, trades and profession, animals and vehicles, water dues and road tolls, lightening charges and conservancy rates are more by way of variety than as important sources of revenue.

As regards municipal expenditure it corresponds necessarily to municipal functions. The one item of expenditure which is connected with no single specific function is the item of general administration and collection. These amount to something less than 10 per cent. Municipalities have in every case been relieved of the Police charges, while in case of famine relief, or extraordinary epidemics, their responsibility is shared also by the State. The construction of light railways—whether a privilege or a burden—will be noted later on.

VII. General Principles of the Development of Municipal Institutions.

The whole subject of the Urban Local Government in India was thoroughly examined by the Royal Commission on Decentralisation (1909), and various recommendations were made. They may be summarised as follows :—

(a) Municipal boards should be constituted on the basis of a substantial elective majority, nominated members being limited to a number sufficient to provide the due representation of minorities, and official experience. On this point the Government of India—six years after the Commission had reported—accepted the principle.

(b) Municipal chairmen should be elected non-officials, Government officers should not be allowed to stand for election, and only where any other chairman but a nominated chairman would be impossible should they be allowed a chance. This principle, also, is accepted by the Government of India, though they would like to leave to the local Governments the discretion to nominate non-official chairmen.

(c) The Bombay system of an elected chairman, acting as the official mouthpiece of the Corporation, with a full time nominated official entrusted with the executive, subject to the control of the Corporation and its Standing Committee, should be adopted every where in the Presidency municipalities. One wonders why the Government of India, if they really desired to liberalise municipal government, should have demurred to this suggestion.

(d) The functions of municipalities need an all round extension, and, consequently, also their finances. We find indications and proofs that municipal trading on a large scale is not only profitable to the municipality itself, but beneficial to the citizens individually, both in the cheapness of the service rendered as well as in the wholesomeness of the article supplied, wherever that system is adopted. But the commission above referred to did not find it within the scope of their reference to make a specific recommendation on the subject; and in the absence of such recommendation the Government of India can hardly be blamed for not incorporating it in their famous resolution.

VIII. General Critique of Local Self-Government in India.

At the very commencement of their resolution of May 28, 1915, the Government of India remark : "The results have on the whole justified the policy out of which local self-government arose. The degree of success varies from province to province and from one part of a province to another, but there is definite and satisfactory evidence of the growth of a feeling of good citizenship, particularly in the towns. The spread of education is largely responsible for the quickening of a sense of responsibility and improvements in the machinery. In certain provinces beneficial results have followed the elaboration of a system of local audit. On all sides there are signs of vitality and growth." But the same resolution goes on to say, "The obstacles in the way of realising completely the ideals which have prompted action in the past are still, however, by no means inconsiderable. The smallness and inelasticity of local revenues, the difficulty of devising further forms of taxation, the indifference still prevailing in many places towards all forms of public life, the continued unwillingness of many Indian gentlemen to submit to the troubles, expense and inconveniences of election, the unfitness of some of those whom these obstacles do not deter, the prevalence of sectarian animosities, the varying character of Municipal area—all these are causes which cannot but impede the free and full development of local self-government."

Even apart from these obstacles, however, the progress of self-government in India has been impeded for other reasons. (1) In the first place all these institutions are new in India, in spite of the fact that India was not unfamiliar with self-government in the past. They are really an attempt to familiarise this country with institutions which have had the most marked success in England. The old indigenous local institutions of India—like the famous, almost immortal village-community—have been abandoned and superseded, if not altogether suppressed ; and progress is sought to be achieved on unfamiliar lines. The new institutions were established suddenly and

such success as they have achieved is due to the now rapidly growing consciousness of local interests among the people, and not to any intrinsic merits of the institutions themselves.

(2) The scope for self-government, whether in the municipalities or in the rural areas, is very limited, quite in conformity with the character of these institutions as experiments in self-government. The principle adopted in India is to leave to these institutions such functions as would ensure interest as well as knowledge on the part of the members. But the functions themselves, however important they may sound in the West, are either novel or limited and restricted so much as to preclude the possibility of genuine interest. The class of citizens who can and will participate in local affairs is not only limited; but among them the necessary knowledge and experience is wanting. If the functions were enlarged, possibly, they would attract a larger class with more knowledge and more brains. Perhaps it is the limited extent of Self-government allowed, more than any other factor, which can explain the want of interest displayed by the municipal public of even such a large and wealthy city as Calcutta. Seldom has the contest there been so keen as the elections for the London County Council or even that which Bombay witnessed during the famous Caucus elections.

(3) The limited scope allowed to the principle of election may also explain in part the lack of adequate interest on the part of the native public. In the old Indian institution there was literally self-government when all the villagers voted on the questions affecting all. In the new institutions there is not even a full representative government. The presence of a fairly large proportion of officials in these councils, and the domination of the official presidents tend towards apathy among the able, want of independence among the incompetent, and the routine for the rest.

(4) The financial resources of these bodies are narrowly circumscribed. Besides, they must all depend upon Govern-

ment aid to eke out their expenses. Government contributions being naturally dependent on the action of the local bodies being approved of by the Provincial Government, they are inevitably under official leading strings. Government control, whether by way of Budget restrictions or approval for new undertakings or new officers, though slightly relaxed, is not yet so modified as to permit a free development.

CHAPTER XII.

THE INDIAN ARMY.

I. History of the Indian Army.

The great Indian army of to-day had the most modest beginning in the guards enrolled for the defence of the treasuries and factories of the East India Company at Surat, Masulipatan, Armagam, Madras, Hoogly &c. The Native army of India proper may be said to have begun in 1748, when Major Stringer Lawrence, the "Father of the Indian army," following the example set by the French, enrolled some sepoy for fighting the French and their native allies. The army thus begun fought many a pitched battle in the service of the "Company Bahadur", defeated one after another their own countrymen, who had not the advantage of the officers and equipment that the Company's sepoy had, and carried the flag of the Company from the Hoogly to the Jumna, from the Jumna to the Setlej, from the Setlej to the Kabul, reversing the tide of invasions for centuries past, and conquering the conquerors of India. The fidelity of the Indian soldiers to the Company for more than a century was unbroken by any serious rebellion; and the fact is all the more remarkable when we remember that in the same period they had fought some of the hardest battles for the Company with always a very small proportion of the English soldiers to aid or to overawe them; when in the same period the English section of the army, both officers and men, had been guilty of more than one rebellion, in more than one centre, for quite selfish reasons; and when we remember that all through that period they were serving an impersonal master, different from them alike in race, religion, and language. And even in the great rising of 1857, the disaffected soldiers of the Company revolted not for any personal selfish reason, as their European comrades had done in the past, but for safeguarding their caste and their religion, which, they honestly, though erroneously, believed were in

danger. Even in the Mutiny of 1857, not the whole army had rebelled; there were none braver in the attack on Delhi than the Sikhs from the Punjab, and the native cavalry under Sir Hugh Rose was second to none in putting down the mutineers in Central India.

The armies of the Company were organised on a definite principle for the first time in 1796, each Presidency having an independent, self-contained army of its own. The European troops numbered 13000 and the native soldiers 54000. The strength of the army as fixed in 1796 was continually increased all through the period ending in the Mutiny of 1857. On the eve of the Mutiny the army in India consisted of 39,500 British soldiers, including 2686 cavalry, 6769 artillery, and 30,045 infantry; and 311,038 sepoys, including 37,719 cavalry, 11,256 artillery, 3,404 sappers and miners, 211,926 infantry. Thus the native army was as 8 : 1 of the European force. After the Mutiny two important questions had to be decided by the Government of India: *first* the form of the European army for service in India; *secondly* reconstruction of the Native army. As to the first there were two opinions. Lord Canning, the Viceroy, proposed a local European army, entirely at the disposal of the Government of India, as not only more economical, but politically more advisable. On the other hand it was suggested that the British army should be a truly imperial army, whose interests should in no way be divided by their having to serve two masters, and whose traditions would be impaired if any section of it was to be permanently localised in India. Just at that time there occurred what was known as the "White Mutiny," on account of the European troops objecting to being transferred to the Crown without their wishes in that respect being first considered: and the advocates of a local army were once for all placed in a hopeless minority. It was accordingly decided that the European army of the Company should be transferred to the Crown, the infantry becoming regiments of the line, and the artillery being amalgamated with the Royal

Artillery and Royal Engineers. It was further laid down that this British force should be maintained at a strength of 80,000, and that the native troops should not exceed it by more than two to one in Bengal, and more than three to one in the other Presidencies. The native regiments were to be recruited by general mixture of all classes and all castes. The army as thus reorganised underwent no radical change beyond slight variations in the total strength, except the introduction of the Short Service System of Lord Cardwell, all through the remaining years of the century. The Simla Army Commission of 1879-80 presided over by Sir A Eden, and assisted by the late Lord Roberts, had defined the objects of the army in India to be : (a) preventing or repelling attacks or threatened aggression from enemies beyond the border, and (b) making successful armed disturbance or rebellion, in British India or feudatory states impossible. The same authority prescribed the strength of the Indian army to be such as would suffice to meet the *combined* forces of Afghanistan allied with Russia *against* India. To the strength, however, so fixed in 1880, substantial additions were made in 1886-7 in the fever of the Russian scare of the day. But a more serious question of organisation, and control cropped up in 1902, after the separate Presidency armies had been abolished in 1890, and the army of India was made one single consolidated instrument.

II. Administration of the Army.

The supreme authority over the army in India is by law vested in the Governor-General in Council, subject to the control of the Crown exercised through the Secretary of State. Until 1906 the Governor-General's Council had a military member, who was in direct charge of the administrative and financial business relating to the army. As a consequence there were frequent differences of opinion between the Commander-in-

Chief, the official head of the army, and the military member of the Council. Lord Kitchener, the Commander-in-Chief in India from 1902, opposed this arrangement, and proposed to place all matters relating to the army directly under the official head of the army. Lord Curzon, the then Viceroy, opposed this proposal on the ground that it tended to subvert the civil control over the army, which was such a distinctive feature of the British constitution. On principle Lord Curzon was right, though Lord Kitchener pointed out that his position did not necessarily involve the ousting of the civil control over the army, as the Commander-in-chief would himself in future be under the Governor-General in Council. He objected to the Military Member of the Council, himself an army officer, and therefore a subordinate of the Commander-in-Chief, sitting in judgment on the military proposals submitted by the superior officer, under cover of advising the Governor-General in Council. Lord Curzon pleaded for the necessity of independent advice to the civilian chief of the Government ; but he was at length overruled, and the Military Department was abolished. Its place was taken between 1906 and 1909 by the short-lived Military Supply Department, which took over some portion of the work relating to the army. From 1902 every question relating to the army goes to the Army Department, the head of which is the Commander-in-Chief, usually an extra-ordinary member of the Viceregal Council.

Lord Kitchener set himself to reorganise the whole army with a view to make the army of India equal to any demands that might in reason be made upon it. The units of the Indian army were renumbered, presidency and local distinctions were abolished, and a homogeneous army, free to serve in any part of India was established. The entire army was formed into 9 divisions, exclusive of the Burma division, each with its proper complement of artillery, cavalry, and infantry, under its own general and staff complete. These were organised for war ; each division could take the field

by itself and yet enough troops would be left behind to guarantee the defence of the country. For the better training of candidates for staff appointments in India, a staff college was established, at Deolali first, and afterwards at Quetta. The strength of the army was also increased, and the artillery section as well as the Flying corps were established. The Indian Army Reserve was substantially augmented, and 350 officers added to the army. The equipment of individual soldiers was altered to suit the altered conditions and the manufacturing establishments of the Ordnance branch were improved. The pay of all ranks was increased, and the general conditions of service were revised. At the Coronation Durbar in 1911 the coveted distinction of the Victoria Cross was thrown open to the Indian soldiers.

The army thus organised made India give a good account of itself in the great European War, besides a net gift in cash to the Empire of £14,50,00,000. But certain defects and short comings having been brought out by experience in that period, a new committee was appointed to inquire into the purpose and organisation of the whole army in India under the chairmanship of Lord Esher.

III. The Esher Report.

It was announced in July, 1919, that the Secretary of State of India, with the concurrence of the Secretary of State of War, had appointed a committee to inquire into the administration and organisation of the Army in India.

The terms of reference were :—

1. To inquire into and report, with special reference to post-bellum conditions, upon the administration and, where necessary, the organisation of the Army in India, including its relations with the War Office and the India Office, and the relations of the two offices with one another.

2. To consider the position of the Commander-in-Chief in his dual capacity as head of the Army and member of the Executive Council, and to make recommendations.

3. To consider and report upon any other matters which they may decide are relevant to the inquiry.

The Report:—The Report was submitted to the authorities in May 1920 and published some months later. Among the outstanding recommendations in the mass of detailed proposals scattered through more than 100 foolscap pages and nowhere succinctly outlined are the following:—

Diminution of the detailed control exercised by the India Office. Membership of the India Council by an officer of high military rank to be abolished. The Military Department Secretary at the India Office to be a Deputy Chief of the Imperial General Staff, the Chief, either directly or through him, being the sole responsible military adviser of the Secretary of State.

The Commander-in-Chief in India to be the sole military adviser of the Government of India, and to be the administrative as well as the executive head of the Army, the Army Department and the Headquarters Staff being consolidated under him.

The Defence Committee set up in India during the war to be continued; a military Council to be established; and decentralization to be promoted by the formation of four commands, each under an Army commander graded as a general officer commanding-in-chief.

Liberal and sympathetic treatment of all ranks in the Army in India, and the removal of such grievances as are shown to exist.

Existing services to be reorganized, and new services to be developed and equipped.

IV. Critique of the Report.

The publication of the report evoked a storm of criticism in India, which protested *in toto* against the main principle underlying it, **namely that the Army in India was not only for the defence of India, but must be considered in relation to the general defence of the Empire.** So strong was this criticism that the Government appointed a representative committee of the Legislature, who focussed their opinion in a report which embodied the following resolutions:—

This Assembly recommends to the Governor-General in Council:

(a) That the purpose of the Army in India must be held to be the defence of India against external aggression and the maintenance of internal peace and

tranquillity. To the extent to which it is necessary for India to maintain an army for these purposes, its organisation, equipment and administration should be thoroughly up to date, and, with due regard to Indian conditions, in accordance with present day standards of efficiency in the British army, so that when the Army in India has to co-operate with the British Army, on any occasion, there may be no dissimilarities of organisation, etc., which would render such co-operation difficult. For any purpose other than those mentioned in the first sentence, the obligations resting on India should be no more onerous than those resting on the Self-Governing Dominions, and should be undertaken subject to the same conditions as are applicable to those Dominions.

(b) To repudiate the assumption underlying the whole Report of the Esher Committee:—

(1) That the administration of the Army in India cannot be considered otherwise than as part of the total armed forces of the Empire, and

(2) That the Military resources of India should be developed in a manner suited to Imperial necessities.

Overseas Service:—II. This Assembly recommends to the Governor-General in Council that the Army in India should not as a rule be employed for service outside the external frontiers of India, except for purely defensive purposes, or with the previous consent of the Governor-General in Council in very grave emergencies, provided that this resolution does not preclude the employment on garrison duties overseas of Indian troops at the expense of His Majesty's Government and with the consent of the Government of India.

Organisation:—III. This Assembly recommends to the Governor-General in Council that the absence of full responsible Government in India, the differences in conditions between India and England and the provisions of the Government of India Act do not warrant differentiation in the army administration between India and England in regard to the ultimate control of, and responsibility for, the defence of the country, and that, in view of the desirability of assimilating the system of administration in India to that in the United Kingdom, which has been arrived at after prolonged experiments, and the desirability of emphasizing the principle of the ultimate supremacy of the civil power, it is essential that the Commander-in-Chief should, without prejudice to his official precedence, cease to be a member of the Governor-General's Executive Council, and that the portfolio of Defence, including Supply, should be entrusted to a civilian member of the Executive Council, assisted by an Army Council including the Commander-in-Chief and other high military experts and a certain number of civilians, more or less on the model of the Army Council in England.

Supply:—VI. This Assembly recommends to the Governor-General in Council that if the portfolio of Defence including Supply is not entrusted to a

civilian member of the Executive Council as recommended above, the proposal of the majority of the Esher Committee for the creation of a separate department for Production and Provision under a member of the Executive Council be not accepted, and that the proposal of the minority, namely that the responsibility should be entrusted to a Surveyor-General of supply who should be a civil member of the Commander-in-Chief's Military Council, be accepted. This would seem to have the merit of being more logical and economical, and would have the further advantage of avoiding the addition of a civil member to the Executive Council in connection with military administration.

Senior Appointments:—V. This Assembly recommends to the Governor-General in Council that :

(a) The Commander-in-Chief and the Chief of the General Staff in India should be appointed by the Cabinet on the nomination of the Secretary of State for India in consultation with the Government of India and the Secretary of State for War.

(b) In the case of Army Commanders who are officers of the Indian Army the appointment should be by the Secretary of State for India on the nomination of the Government of India.

(c) Appointments to the offices mentioned against Serial Nos. 3, 6, 7, 8, 10, 12, (Report Schedule annexed to Section VI) should be made in the manner proposed for Army Commanders.

(d) The appointment of Secretary to the Military Department, India Office, should be made by the Secretary of State on the recommendation of the Government of India, after advice obtained from the Chief of the Imperial General Staff. He should *ex officio* have the status of a Deputy Chief of the Imperial General Staff and should have the right of attending the meetings of the Army Council when questions affecting India are discussed. He should not be under the orders of the Chief of the Imperial General Staff.

C. I. G. S.:—VI. This Assembly recommends to the Governor-General in Council that the Commander-in-Chief's right of correspondence with the Chief of the Imperial General Staff should be subject to the restriction that it does not commit the Government of India to any pecuniary responsibility or any line of military policy which has not already been the subject of decision by them; copies of all such correspondence at both ends being immediately furnished to the Government of India and the Secretary of State for India.

Indian Officers:—VII. This Assembly recommends to the Governor-General in Council :—

(a) That the King-Emperor's Indian subjects should be freely admitted to all Arms of His Majesty's Military, Naval and Air forces in India and the ancillary

services and the auxiliary forces, that every encouragement should be given to Indians including the educated middle classes, subject to the prescribed standards of fitness, to enter the commissioned rank of the Army, and that in nominating candidates for the entrance examination, unofficial Indians should be associated with the nominating authority.

(b) That not less than 25 per cent of the King's Commissions granted every year should be given to His Majesty's Indian subjects to start with.

Indian Military College:—VIII. This Assembly recommends to the Governor-General in Council:—

(a) That adequate facilities should be provided in India for the preliminary training of Indians to fit them to enter the Royal Military College, Sandhurst.

(b) That the desirability of establishing in India a Military College, such as Sandhurst, should be kept in view.

Pay:—IX. This Assembly recommends to the Governor-General in Council that, in the interest of economy and in view of the likelihood of the growth of the Indian element in the commissioned ranks, it is essential that before vested interests arise, the pay of all commissioned ranks in all branches of the Army should be fixed on an Indian basis, with an overseas allowance in the case of British Officers, and with a similar allowance for Indian officers holding the King's commission, when serving overseas.

Territorial Army:—X. This Assembly recommends to the Governor-General in Council that in view of the need for the preparation of India to undertake the burden of self-defence and in the interests of economy, it is essential that a serious effort should be made:—

(a) To organise and encourage the formation of an adequate Territorial Force on attractive conditions.

(b) To introduce in the Indian Army a system of short colour service followed by a few years in the reserve.

(c) To carry out a gradual and prudent reduction of the ratio of the British to the Indian troops.

XI. This Assembly recommends to the Governor-General in Council that officers in the Indian Territorial Force should have the rank of 2nd-Lieutenant, Lieutenant or higher rank, as the case may be, and that no distinction should be made between the Indian Territorial Force and the Indian Auxiliary Force in respect of the authority which signs the Commissions, and that officers in these two Forces should take rank *inter se* according to dates of appointment.

Exchange of Officers:—XII. This Assembly recommends to the Governor-General in Council that no proposals for interchange of officers

between the British and Indian services should be carried out unless the following conditions are satisfied :—

(a) That the cost to Indian revenue should not be thereby appreciably increased.

(b) That such proposals should not be allowed to interfere with a steady expansion in the proportion of King's Commissions thrown open to Indians in the Indian Army.

(c) That the interchange of British officers should, in no way, affect the control of the Government of India over the entire Army in India.

Economy:—XIII. This Assembly recommends to the Governor-General in Council that, having regard to the creation of two additional commands in India the Government of India do consider the expediency of reducing the size of the administrative staff at Army Headquarters.

XIV. This Assembly recommends to the Governor-General in Council that, as soon as the external and internal conditions of India permit, the Governor-General in Council should, with the concurrence of the Secretary of State, appoint a Committee adequately representative of non-official Indian opinion for the purpose of examining and reporting upon :—

(a) The best method of giving effect to the natural rights and aspirations of the people of India to take an honourable part in the defence of their country and prepare the country for the attainment of full responsible government which has been declared to be the goal of British policy.

(b) The financial capacity of India to bear the burden of military expenditure ;

(c) Her claim to equality of status and treatment with the Self-Governing Dominions ; and

(d) The methods of recruitment to the commissioned ranks of the Indian Army ;

XV. This Assembly recommends to the Governor-General in Council that Anglo-Indians should be included in the terms "Indian subjects" or "Indians" wherever such terms occur in the above resolution.

Assembly's Decisions:—These resolutions were subject to full debate in the Imperial Legislative Assembly in the course of which Resolution No. 3 proposing the creation of a Portfolio of Defence was negatived.

Resolution 4 was carried with the following amendment that the words from "if the portfolio" down to "recommended above" be omitted.

On Resolution No. 7 an important amendment was carried by a bare majority and was accepted as a substantive proposition in the following form:—

This Assembly recommends to the Governor-General in Council: (a) That the King-Emperor's Indian subjects should be freely admitted to all arms of His Majesty's Military, Naval and Air forces in India and the Ancillary services and the Auxiliary forces, that every encouragement should be given to Indians including the educated classes, subject to the prescribed standards of fitness, to enter the commissioned ranks of the Army and that in nominating candidates for the entrance examinations, unofficial Indians should be associated with the nominating authority and in granting King's Commissions, after giving full regard to the claims to promotion of officers of the Indian Army who already hold the commission of His Excellency the Viceroy, the rest of the commissions should be given to cadets trained at Sandhurst. The general rule in selecting candidates for this training should be that the large majority of the selections should be from the communities which furnish recruits and as far as possible in proportion to the numbers in which they furnish such recruits."

Resolution 8 was carried with the following amendment:

"That for clause (b) the following clause be substituted:

"(b) That as soon as funds be available steps should be taken to establish in India a Military College, such as Sandhurst, and the desirability of establishing in India training and educational institutions for other branches of the Army should be steadily kept in view."

V. Critique of the Indian Military system.

The foregoing resolutions embody the general criticism against the Indian military system, which for the sake of convenience we may restate here as follows:—

(1) The objects and purpose of the army in India are not so clearly specified but that room is left for using the army of India not always in the exclusive interests of India.

(2) As at present organised, the Indian army is an exceedingly costly instrument, particularly owing to the excessive expensiveness of the European section of the army in India, which costs per head over four times as much as the Indian section.

(3) The service in the superior commissioned ranks in the army had been, until after the war, monopolised exclusively by the Europeans; and though now the commissioned ranks in the army are thrown open to Indians (the Commander-in-Chief declared in 1923 that 8 units were to be Indianised as a first instalment of the new policy) the process of Indianisation is necessarily very slow.

(4) The entire organisation of the army is such that it makes no distinction between the army on peace footing, and the total strength available in the extreme need of national defence. There are no reserves to speak of, since the recently created units of territorial force are yet insignificant from the standpoint of the grave responsibility of defending the country, while the Volunteer organisations are little better than armed police.

(5) The **naval defence** of the country, though not quite so urgent a consideration as the guarding of the land frontiers, is nevertheless a matter which does not receive its due attention owing to the already very heavy burden of the Indian Army. The shores of India are, it is true, not exposed to ambitious rivals across the Indian seas; and her regions along the shores have natural defences of their own. The trade of India, moreover, interests and profits the customers of India far more deeply than they interest India herself; and the former may be trusted for their own benefit to take measures to maintain this trade. But still the utter absence of any naval force for India is dangerous. India should have a modest Navy of her own, if only for the sake of training to her sons. The ample margin of possible retrenchment in the Army would more than suffice to pay for the additional cost of such a Navy, especially if the existing Royal Indian Marine is scrapped entirely and the contribution now made to the Imperial Navy is similarly discontinued.

(6) The question about the control over the Indian army has not, so far, taken that actually painful aspect, which the

similar question with regard to the navy had taken in Canada just before the outbreak of this War. Provisions of the present Act no doubt require that Indian troops shall not be used outside the frontiers of India without the consent of Parliament. But such provisions cannot solve the grave question as to what authority is ultimately supreme in connection with the local forces of defence of any one particular part of the Empire. The supremacy of the King is only theoretical; but it is just possible that the Government of England may, sheltering themselves behind the name of the King, endeavour to use the local forces of the different part of the Empire for their own purposes. And if these purposes are not, or cannot, be approved of by the Government of that particular part, must they always yield to the English Government, and allow their forces to be used in English quarrels, merely because the English Government claim to speak in the name of the sovereign? This grave question did not arise in the last War because every part of the Empire had made England's quarrel its own. But there is no ground to assume that such an identity of interest and sentiment would occur in every future war. This question is necessarily very grave already for those parts of the Empire, whose Governments enjoy a substantial measure of local autonomy, and it is relatively unimportant for countries like ours whose Government have no real independence. It is nevertheless, even for Indians, a grave constitutional question of the first importance. Within the scope of this work, we can but indicate this question, for it trenches upon the much wider problem of the constitution of the entire British Empire, which we cannot discuss here.

CHAPTER XIII.

The Native States of India.

A study of the Indian system of Government, however brief, would be incomplete without some account of the relations of the Government of India with the Native States. They form an integral part of India, and though at first sight they may seem to be excluded from the scheme of Government in British India, the interests of the Native States, of the princes as well as of their subjects, are so closely interwoven with the interests of the population of the rest of this mighty country, that we cannot brush aside, as of no consequence, the question of the Native States, their present position and their place in the India of a generation hence.

In studying this question the student is confronted at the very outset with a very serious difficulty. The relations of the Government of India with the native princes are to a large extent conducted without that publicity which characterises the proceedings of the Government in other departments. This is of course no peculiarity of the Indian Government: even in England the complaint is very frequently made that the foreign policy of the country, on which depends so much the prosperity of a trading nation like Britain, is conducted without any reference to Parliament. To some extent this policy is not unreasonable, since, though the days of the bedchamber politics are over, the foreign relations of every country require such a delicate handling that the fierce light of popular criticism would throw the whole mechanism out of order. On the other hand it is justly contended that publicity would do away with many of those trivial but yet portentous misunderstandings which often result in the most disastrous wars. And it is all the more dangerous when what is claimed to be entirely confidential leaks out, and not always in its true form, thereby causing endless confusion, misunderstanding,

hatred. While therefore, we can say very little authoritatively, beyond what we can glean from the various treaties and sanads, about the way the relations between the Princes and their Suzerain are determined, we know, or we fancy that we know, a lot about what takes place behind the scenes, which, if published, would place an entirely different complexion upon certain matters from the version which the official gazettes place before the public. This state of chronic and confirmed doubt and suspicion is naturally very dangerous to every one concerned, but in the existing state of things it seems to be inevitable. The student of this part of the governing machinery in India must beware against saying too little as well as against saying too much; he must weigh every word, and consider every phrase in all its possible and even its impossible meanings; for the latter are even more to be dreaded than the former, as, exactly because an interpretation is impossible it would be deemed to be the most likely, and would therefore be adopted.

I. The Origin of the Native States.

Confining ourselves only to the British period, the native states, as we know them to-day, did not originate until the days of Lord Wellesley. The Company had no doubt entered into relations with the Princes of India long before that date; but their position at the native courts, in the days before Wellesley, was hardly superior to that of suppliants or military adventurers. Even where the relations were those of equals, as in the case of the Nawab of the Carnatic or the Nizam, the position of the Company was far too uncertain, and their territorial possessions far too inadequate to their pretensions of a later day, to allow us to regard them as really the equals of their native allies. In a sense that idea of equality, which we now associate with the alliance of two modern sovereign

powers like England and France, never appeared in India, at least as far as the East India Company were concerned. They passed too rapidly from the position of dependents to that of dictators. The Subsidiary Alliances of Wellesley laid the foundations of our modern protected states in India. By requiring them to maintain at their cost a considerable British army, ostensibly to aid them in their perennial dynastic quarrels, possibly to keep them in check against any design that they might be misled to entertain against the Company; by compelling them to surrender all control over their foreign relations; by stipulating that they should entertain no European in the service without the consent of the Company's government; by inducing them to agree to the arbitration of the Company in all their differences with the friends of the Company; Wellesley managed to render them entirely innocuous for future mischief. Naturally, all the consequences of this grand policy were not clearly apprehended from the first even by the author himself. No wonder that those who followed him, or those who opposed him, could not see in this net-work of alliances anything but an irresistible force, which would steadily impel the Company, in spite of themselves, from one frontier to another, till at last they would have to succumb under the very load of their greatness; and consequently tried to set aside this grand and silent scheme of conquering India without shedding a drop of unnecessary blood. It is difficult to say what Wellesley himself thought to be the probable results of such a policy in the end. Would he have regarded it only as a prelude to total annexation of the native territories, when the Company was strong enough to venture on annexation without unnecessarily exposing themselves? Or did he consider his scheme as an ultimate and permanent solution of the political problems of India in his day? Certain it is that while his policy had inspired the weaker among the native princes with hopes of their own continuance in power, it provided no obvious solution to the riddle which faced his immediate successors as to what should be done in the event of internal anarchy, or external molestation of those who had not allied

themselves with the Company yet; nor did they know what to do when a prince, secured in his own possessions by the aid of the Company, used his security to his own undoing by extravagant misrule in his own dominions.

Lord Hastings carried the policy of Wellesley a step further; and, while arranging treaties with the native princes for safeguarding and improving the position of the Company, he made it clear that the obligations of an alliance with the Company included a reasonable measure of decent Government within a prince's own dominion. The direct extension of British territory, which this Governor-General was instrumental in bringing about, was also due to the same general idea of securing a modicum of good Government to the peoples of India whether directly under British rule or not. In his time he had no distinct opportunity to make this principle clear, but under his much more pacific successor, Lord William Bentinck, the principle was carried out in the case of Coorg, which was annexed to the dominions of the Company, on the reigning prince showing himself utterly incompetent to improve his Government. In the Mysore case the same Governor-General adopted a slightly different principle; the Mysore territories were placed under the administration of the Company's officers, though the Government was conducted in the name of the prince himself. The prince was given a fixed income to support his position, and beyond that he had nothing to do in the affairs of his principality.

In the twenty years that followed the departure of Lord William Bentinck from India, the policy of the Company's government fluctuated in this respect. The important native states of the Punjab, of Nagpur, of Oudh and of Sind were all annexed for one reason or another; and for a while it seemed that the supreme power in India had made up its mind to abandon the role of King Log and commence the part of King Stork. The annexations of Sind and of the Punjab were dictated by reasons of imperial defence; they lay so temptingly in the way of India's centuries old chan-

nels of invasion, and of the Company's natural line of advance, that the authorities in India as in England decreed their annexation. In the case of the Punjab there were no doubt other considerations. Under the late ruler Punjab had been a strong and reliable barrier between the English possessions and the old invaders of India ; his successors were too weak to preserve their own authority ; and so to remove once and for all this danger of the pretorian bands of the Punjab Government, Dalhousie decided for annexation, only two years after Hardinge had, on a similar occasion, decided for maintaining the local prince in subordinate alliance with the Company. In the case of Sind there was not the ghost of a reasonable excuse ; and it was much more of a " humane piece of rascality " than the facetious Sir Charles Napier was aware of. The fundamental reason was in both these cases imperial necessity ; the others were only temporary pretexts, the hollowness of which was not disguised from the superior authorities at home. The same may be said of Nagpur. It lay so inconveniently between the different parts of the Company's dominions, and prevented so effectually the linking up of the various presidencies and provinces with one another, that the Doctrine of Lapse received all the sting and importance which the ingenuity of the lawyer could devise and the necessities of the statesman could suggest. We cannot give the same explanation for the annexation of Oudh ; there the reason given was the prevailing and apparently irremediable misrule of the native government. The principle was at that time deliberately asserted that by supporting a prince on his throne against all opposition, whether from his own subjects or from his external enemies, the Company's Government had made themselves responsible for the proper discharge, of the duties of the sovereign towards his subjects ; and that the sovereign who failed to improve his administration in spite of repeated warnings could not, in justice to his subjects, be maintained in power by the Company without their being held responsible for that misrule.

These annexations of Lord Dalhousie occasioned a natural and general alarm. The Mutiny which followed was regarded by many as the direct result of the many and injudicious Annexations of the preceding Governor-General; though it is a fact of history that the rebel forces received no substantial aid from the Native Princes. That may have been due to the distrust of the rebel leaders and of their motives more than to any settled affection for the Company's suzerainty. The suspicions of the Company's intentions were much too generally entertained, and far too reasonably founded for the new Government of India under the Crown to ignore altogether the problem of the Native States. The Queen's proclamation allayed all doubts that might have been felt by the Native princes by specifically promising that the Native States would be maintained in their integrity, and that the honour of the native princes would be preserved by the English sovereign as the honour of the English Crown.

II. The Present Position.

Before trying to speculate on the actual position of the Native States in the Indian polity to-day, as well as their future, it would perhaps be better if we summarise the existing obligations of the Government of India towards the Native States and vice versa, as far as we can learn them from the published treaties and arrangements between the two. Among themselves the Native States show every variety of size and importance, and perhaps the summary given below may not apply in its entirety to every state irrespective of its size and its past record. Generally speaking, however, the mutual obligations sketched below hold true.

Every state in India is protected against aggression from without, while a solemn assurance is given that their protector, the paramount power, will respect their rights as

rulers. Hence in all questions of foreign relations the paramount power acts for them. Within their own dominions, the inhabitants of those territories are regarded as the subjects of their rulers; with the exception of the personal jurisdiction over British subjects, and the "residuary jurisdiction," these rulers and their subjects are free from the control of the laws of British India. The police of British India, for instance, cannot arrest criminals escaping from British India to the adjoining Native States, but they must be arrested by the authorities of the native state and handed over to the British police, or the latter might be permitted to arrest itself. The native princes are secured not only against the menace of an aggressive neighbour! the paramount power will, it is well understood, intervene when the internal peace of their territories is seriously threatened. They also enjoy as a matter of course all the benefits which the paramount power secures by its diplomatic relations, as for instance in commerce, railways, ports and markets of British India. Though a customs line is not entirely abolished, it is none of the most stringent; while as regards the movements of the people of India from one part of the country to another, no passport is required, and no barriers created. According to the strict letter of the law, until quite recently, the subjects of the Native States were foreigners in British India; but they were admitted practically to all the privileges of British Indian subjects, and, since the last Act on the subject, even this slight difference is done away with.

Against these rights the Native States have corresponding obligations. Thus as regards the Foreign Relations, the Native States have practically no foreign relations except those with the Government of India. They have no international existence. Not only can they not deal with any foreign prince or state by themselves, but they cannot treat one another among themselves without the intervention of the paramount authority. This exclusion from all international relations is carried so far that the Native States cannot employ any European

or American without the previous permission of the British Government in India. They cannot receive any diplomatic agent from any foreign power, nor accept any title or mark of honour from such foreign powers except with the consent of the Imperial Government. The subjects of a Native State cannot obtain a passport from their own prince for purposes of foreign travel; and they are regarded for all practical purposes, when travelling in foreign parts, as subjects of His Britannic Majesty. As for foreigners resident in a Native State, it is the British Government, and not the Government of the State, which has jurisdiction over such persons. If the supreme Government enters into any treaty with a foreign Government, which cannot be carried into effect without the participation of a Native State, that state shall do all in its power to give effect to that treaty. Amongst themselves all disputes must be referred to the arbitration of the paramount authority. In all such interstate questions, as boundary disputes, or the mutual extradition of criminals, or the completion of an interstate line of railway, the paramount power must arrange the matter, and its arrangement is binding upon the Native States.

As the princes have no foreign relations and no occasion to fall out with their neighbours, they need not keep up a large military force. The Instrument of Rendition of the Mysore State lays down that the military force maintained in Mysore "for the maintenance of internal order and the Maharaja's personal dignity, and for any other purpose approved by the Governor-General in Council, shall not exceed the strength which the Governor-General in Council may from time to time fix." Though this provision is not specifically incorporated in the treaties with other States, it is well understood that the army maintained by the native princes shall ordinarily be confined to the police needs of the State and for the proper show of the ruler's dignity. The British Government in India maintains an army which is organised not only for the defence of British India, but also of the territories of the native princes.

On the other hand it is expected of these states that they shall render a proper account of themselves in the event of the necessity of Imperial defence. They must co-operate actively in securing the efficiency of the Imperial army, and at the same time do their allotted share of the defence of the empire. The latest suggestion of getting additional contributions from States towards the cost of Imperial Defence in India has not yet materialised owing to the States demanding a *quid pro quo* in the shape of a share in the Imperial Indian Customs Revenue. Under these principles the Native States must not fortify or garrison their own strong places for that the Imperial Government may have cause for anxiety. They must allow the British forces in their dominions camping facilities, find them supplies, and arrest their deserters. They must submit to the Imperial control over the means of communications like the railways or the post and telegraph office within their territories. As regards their active help in time of war, that depends on Treaties partly, and partly upon good understanding and loyalty, to which is trusted the solution of all doubtful points when the occasion arises. In the last War, for instance, the Native States, one and all, rendered the most magnificent service to the British Empire, in excess, in many cases, of their paper obligations. At the present time several states in Rajputana, Central India, and in the Punjab, as well as Cashmere, Hyderabad, and Mysore habitually maintain what are known as the Imperial Service Troops.

In all the matters relating to the obligations of the Native States in connection with foreign relations and the defence of the country, the position of every state is generally speaking the same. It is otherwise with the questions relating to the internal administration of the several states. Several old and unrevoked treaties require that the British Government shall have nothing to do with the Maharaja's dependents or servants "with respect to whom the Maharaja is absolute." The usage of more than half a century has confirmed the principle that the Government of India is not precluded "from stepping in

to set right such serious abuses in a native government as may threaten any part of the country with anarchy or disturbance, nor from assuming temporary charge of a Native State when there shall be sufficient reason to do so." (Lord Canning's Minute of April 30, 1860). As to when that necessity may be said to have arisen is in the discretion of the Governor-General, subject to such control as may be provided by Parliament. It is well known now that the Government of India will intervene in all cases of grave internal misrule. Baroda in 1875, and Manipur and Nabha more recently, provide leading cases on the right of intervention of the supreme Government of a State, or, more precisely, to check and suppress internal abuses. They would also intervene, it is felt, to prevent the dismemberment of a state by divisions among the sons of a prince or by means of a legacy.

In the name of public order the paramount power would intervene to stop disputes about succession and to prevent rebellion. So also to put a stop to such inhuman practices as Female Infanticide, or Sati, or Slavery or barbarous punishments. On the other hand, in such cases as the reforms in administration, in prosecuting works of material development of the country, the co-operation of the Native States would be invaluable to the British Government; but in this respect the latter would ordinarily content themselves with advice, and wait for the willing co-operation of the local prince.

The dissimilarity in the relative position of the different princes is the greatest in matters of local jurisdiction. It is not difficult to understand that the paramount power should claim jurisdiction in connection with its own subjects resident in the Native States, as also in connection with the foreign subjects resident in those territories. But in some states the jurisdiction exercised by the suzerain goes far beyond this, and extends sometimes to a population which neither consists of British officials nor of British subjects. This jurisdiction is sometimes conceded by treaty, but frequently it is the result of long usage and acquiescence. In order to bring about

a closer co-operation between the various governing authorities in India, as also to forward the common ideal of Indian political evolution, the Native Princes have, since the War, admitted several important changes in their general policy of dealing with the paramount power. They have, on the one hand, asked for or accepted, special representation for their own order in all Imperial gatherings of the British Empire, such as the periodical Imperial Conferences; and all public pronouncements from the British Government have of late been addressed to the "Princes and Peoples" of India. On the other hand, they have obtained a special constituent body of their own order, called the Princes' Chamber. This last named body is outside the Indian legislature, and is meant to see that the treaty rights and obligations are mutually, and duly observed and enforced; and it was in response to this that the Viceroy, Lord Reading, afforded the princes special protection by a Princes Protection Act against attacks in the British Indian Press, at the cost of exercising his extraordinary powers for overriding the Legislature. It remains to be seen whether such co-ordination of powers would imply a corresponding obligation on the Princes to improve their domestic administration so as to bring that into line with the administration of the British provinces; and if not, what expedients would the paramount power adopt to enforce a modicum of concurrent political development in the states on the lines or ideal already accepted.

III. The Future of the Native States.

As already observed elsewhere, the accepted ideal of political evolution in India is a "Sisterhood of States" including both the British provinces and the Native States. The foregoing sketch of the present position of the Native States in the scheme of Indian polity is sufficiently intriguing

not to raise the inquiry as to their future. The policy of their gradual absorption in the British territory, under pretexts which could always be discovered has, however, too definitely been dropped by the suzerain to permit us in indulging in speculations as to the possible merits of a policy of gradual sequestration of even the remnants of sovereign authority that the Native States enjoy to-day. Had it been intended to bring the whole of India gradually under one undisputed authority, occasions were not wanting in the case of some of the most important states in the last 60 years or so to carry that policy into execution. It may perhaps be said that the obligations with the Gaekwar family were far too deep and enduring to allow the suzerain the exercise of the last authority of paramount power on the mere pretext of a laxity in the personal conduct of a native ruler in the nineteenth century in India. The graver charge of the attempt to poison the representative of the British Majesty, not being proved to the satisfaction of the Indian Commissioners in the Commission of Inquiry in that case, the Government of India decided in that case to dethrone the prince but to maintain his principality, utilising that occasion for a clear enunciation of the mutual rights and obligations. But the best proof of the intentions of the Government of India in favour of maintaining the native princes is, perhaps, afforded by the restoration of the State of Mysore to the Maharaja, who had been for more than 50 years deprived of his princely authority in the administration of his territories. The Rendition of that state, after fifty years of direct administration by British officers, to the native ruler may well be cited as an example, evidencing the trend of policy in favour of the maintenance of the native rule. There are many reasons why the Government of India may not merely tolerate but actively support the native rule in certain parts of India. Even apart from the treaty obligations, which cannot be treated by a modern civilised power as mere scraps of paper without endangering its own reputation in the family of nations, even though in the particular case at issue the

power tempted to set at naught its treaties may have nothing to fear; the British Government has many distinct advantages in their preservation. The States bear an appreciable portion of the cost of the defence of the Indian Empire, and provide a sort of indefinite but yet a reliable reserve to be drawn upon in case of emergency. And people are not wanting who allege that there is a more deep-seated reason, a more subtle influence, requiring the British Government to tolerate and even to actively support the Native States. The Native States provide an admirable foil, by their relatively backward system of Government, to set off to advantage the British form of Government. Perhaps this does but scant justice to the motives of such distinguished statesmen like Lord Curzon, who endeavoured, even at the risk of being misrepresented, to infuse a new spirit of vitality in the administration of the Native States. Said he at the Rajkote Durbar in November 1900: "I am a firm believer in the policy which has guaranteed the integrity, has ensured the succession, and has built up the fortunes of the native states. I regard the advantages accruing from the secure existence of those states as mutual. In the case of the chiefs and the states it is obvious.....But to us also the gain is indubitable, since the strain of Government is thereby lessened, full scope is provided for the exercise of energies that might otherwise be lost to the government, the perils of excessive uniformity and undue centralisation are avoided, and greater administrative flexibility ensured. So long as these views are held,—and I doubt if any of my successors will ever repudiate them,—the native states should find in the consciousness of their security a stimulus to energy and well doing.....If the native states, however, are to accept this standard, it is obvious that they must keep pace with the age. They cannot dabble behind and act as a drag upon an inevitable progress. They are links in the chain of Imperial administration. It would never do for the British links to be strong and the native links to be weak and vice versa".....

It would be manifestly unjust to such views to assume that the men at the head of affairs in India are interested in keeping the government of the states deliberately backward. On the other hand, it cannot be denied that the Native States are, by their very nature, impervious to the modern western ideas of good government. Whatever be the intention of the Viceroy and Governors in India, they are but the birds of passage, whose influence cannot extend beyond the period of their own sojourn in the country. Unless, therefore, it be made a maxim of public policy to try and make the Native States keep up the pace, they would invariably lag behind. But such efforts at making them keep up their rate of progress are apt to lead into too detailed, and not always pleasant, interference into what may be regarded as the purely domestic concerns of a prince. And such interference had best be avoided for obvious reasons. To the British official, who really desires the uplift of the land he serves, it may no doubt seem an onerous condition that the equal and simultaneous progress of all parts of India is rendered impossible for what he might well deem to be preventable causes. To the Indian nationalist also, the presence of the Native States, as so many relics of a deplorable past, is insupportable. Impotent to do any good, incapable of assimilating modern ideas of good Government, constitutionally averse to all ideas of progress, the Native States cannot but appear to the impatient nationalist as so many hindrances in the way of India's regeneration. He is but too apt to forget that the Native States offer, in the existing circumstances of this country, about the only chance for displaying administrative talents or genius to the inhabitants of India. He also forgets that the Native States are the only section of the Indian community, who can, if they would, promote materially the regeneration of India. He thinks but of the few but fascinating examples of royal license and recklessness; he remembers their misrule in the past, and broods upon their apparent absolutism in the present, and hastens to dub them from such evidence as entirely unsympathetic with the hope and aspirations of the

rising generation of India. Curiously, therefore, if at this time there are any advocates of the Mediatisation, or even total annexation of the Native States, they are to be found in the ranks of the young and ardent nationalists.

From the point of view of the Princes themselves, also, it must be observed, the position of the rulers of the native states is not quite enviable. To the thinking portion of them it cannot but be evident that their powers are in most directions so narrowly circumscribed, by formal engagements, or by the silent force of usage and acquiescence, that they are unable to govern according to their inclination. They are not in reality the equal members of an imperial federation, in which the interest and authority of each partner are equal, though expressions are often given utterance to by responsible officials, which might perpetuate that misunderstanding. Between them and the suzerain there is no independent tribunal to judge; and the decisions of one of the parties to a dispute, sitting as a judge in the dispute, cannot be expected to be always palatable to the other party. They are also not in the position of a powerful aristocracy, as is sometimes believed: for they have yet that much of the sovereign in them, which, while rendering them entirely innocuous as sovereigns, yet prevents them effectually from assimilating the mentality of a class of citizens, however privileged that class may be. Probably no one would repudiate more emphatically than the princes themselves the idea of regarding them as merely the hereditary, titular, privileged subjects of the British Crown, entrusted with the task of administering their patrimony, in trust for, and on behalf of, the British Crown. Those in the ranks of the Indian publicists, who hope for the salvation of India through the action of these our aristocracy, are destined to bitter disappointment, if they go on cherishing their delusion.

These considerations make the task of forecasting the future of our Native States all the more difficult. They are not members of a federation; they are not the landed aristocracy of India corresponding to the barons of England and the

Junkers of Prussia; they are unable to march ahead, and yet they would not be suffered to lag behind. They are not respected as their natural leaders by the people, and yet not treated as their collaborators by the government; they are incapable of uniting among themselves, and yet powerless to resist by themselves a determined attack on their position. Under these circumstances the student of our system of Government must resign the task of offering a possible, or even a plausible, solution of this enigma, and leave it to be decided by the man of the moment.

ERRATA.

On p. 60 S. 21 add the Proviso.

Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council shall be deemed to be made with the concurrence of a majority of such votes.

p. 61 S. 26 read 28 instead of 14 in line 1.

Add after p. 128 end, the following:—

confidence of a majority in their Legislative Council will be given the fullest opportunity of managing that field of Government which is entrusted to their work. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible.

On p. 63 S. 10 line 3.

After *Superannuation*, add the words:—
or retiring.

And after *Allowance*, add the words:—
and their legal personal representatives shall for the purposes of gratuity.

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